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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

ON MOTION FOR JUDGMENT ON AMENDED COMPLAINT

REPLY BRIEF FOR THE UNITED STATES

In the briefs filed by the defendant States, they jointly attack the affirmative case set forth in Part I of our main brief and, in separate briefs, argue the issues relating to their individual claims.[1] Generally we shall follow the same order of presentation in this reply.

INTRODUCTION

In order to bring the issues into focus, it may help to state what appear to us to be the most important areas of agreement and disagreement.

First, there is now no issue between the parties that the rights of the States are fixed by what was granted

[1] We shall refer to our main brief as "U. S. Br.", to the Joint Brief of the States as "Jt. Br." and to the separate briefs as "La. Br.", "Tex. Br.", "Miss. Br.", "Ala. Br.", and "Fla. Br."

them by the Submerged Lands Act (Jt. Br. 11, Tex. Br. 1–2, La. Br. 2, Miss. Br. 2, Ala. Br. 2, Fla. Br. 1). It is agreed, moreover, that Congress could have granted the States the right to develop the natural resources of the continental shelf without reference to State or national boundaries or the limits of territorial waters. But the issue is not on what Congress could have granted if it had passed another bill, but on what Congress did actually grant. It is the position of the United States that what was actually granted was intentionally limited to the historic boundaries of the States as those boundaries have existed from the moment they entered the Union or as thereafter approved by Congress. The States argue that those historic boundaries are intended to be not actual legal geographic boundaries, but paper claims to territory. It is the position of the United States that the national boundary, as fixed by the political branches of the government in their conduct of foreign relations and as recognized in international law, is controlling in this case by reason of the Congressional limitation in the Submerged Lands Act on the grant to historic boundaries. It is the position of the States that the Court need look only at the claims made by their predecessors in title and by their constitutions and statutes.

Second, in construing the intention of Congress, it cannot be denied that there were many expressions of belief by sponsors of the legislation that its effect would be to grant three leagues along the coasts of

Texas and part of Florida. Spokesmen for Louisiana expressed the view that it would receive a similar grant. The difference of opinion here is that the United States asserts that Congress deliberately refrained from making the grant a specific one to three leagues in the Gulf of Mexico; Congress intentionally left the extent of the grant to be determined as a matter of law from the limitation to historic boundaries at the time of admission. Some legislators thought that this reference to historic boundaries would surely lead the courts to hold that one or another of the Gulf Coast States obtained three leagues by the grant; other legislators felt that the grant would be properly construed as limited to three miles. Congress did not resolve that question in the Submerged Lands Act, but left it for adjudication.

Third, there is no issue between the parties that, insofar as international law governs, the crucial times are the dates of admission; nor is there dispute that at those dates some nations asserted claims to a marginal sea of three leagues, rather than three miles, and that some publicists supported their right to make such claims. The United States asserts that it is not international "law" in the abstract, but the international position of the United States, that controls; and that at the crucial times the United States claimed for itself, and limited its recognition of claims by other nations to, three miles and no more.

Fourth, the principal issue with respect to Louisiana's claim (and the same issue is also involved with

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respect to Mississippi, Alabama, and Florida) is whether the inclusion, in a territorial description, of all islands within a stated distance of the coast means that there is considered as part of the territory a belt of water of the specified width, regardless of whether there are islands to that distance or not. Louisiana also asserts, and the United States denies, that the United States has established a three-league boundary for the entire coast along the Gulf of Mexico.

Fifth, there is no question that the Republic of Texas had adopted a statute fixing its line at three leagues from land, nor is there dispute that the treaty of Guadalupe Hidalgo defined the international boundary between the United States and Mexico as commencing at a point three leagues from land. But the United States asserts that the United States foreign policy at the time refused recognition of the claim of the Republic of Texas, and that at the time Texas joined the Union its boundary was required to conform to that of the United States which was three miles out from the coast. The United States also claims that the Treaty of Guadalupe Hidalgo did not fix a national maritime boundary, but only the limits between the United States and Mexico for certain purposes; it was interpreted by both nations, and is still interpreted by the United States, as not fixing a three-league belt in the Gulf of Mexico. Texas, on the other hand, asserts that the United States has by these acts and others recognized three leagues for the State of Texas and has established a like national boundary in the Gulf of Mexico.

Sixth, Florida makes a claim, which the United States denies, on the basis of asserted territorial claims by Great Britain and Spain when they were in possession. There is also in issue with Florida the effect to be given to the boundary provision in the Florida Constitution at the time its representation in Congress was reestablished after the Civil War.

ARGUMENT

I

UNDER THE SUBMERGED LANDS ACT, THE DEFENDANT STATES ARE LIMITED TO THE NATIONAL BOUNDARY WHICH AT ALL RELEVANT TIMES WAS THREE MILES FROM THE COAST

A. CONGRESS INTENTIONALLY LIMITED ITS GRANT TO THE STATES TO THE LINES WHICH THEY COULD ESTABLISH AS THEIR HISTORICAL LEGAL BOUNDARIES

1. *Rather than making a specific grant, Congress left it to the States claiming extended historic boundaries of more than three miles to establish such boundaries in the courts*

Basically, the argument advanced in the joint brief (Jt. Br. 19–35), by Texas and Florida (Tex. Br. 27–73, Fla. Br. 24–33), and to a lesser extent by Louisiana (La. Br. 61–62), is that Congress believed that the bill it was considering and passed would result in giving those States the right to develop the resources of the continental shelf out to three leagues. In support of this position they show that individual Senators, including the draftsman and the sponsors of the legislation, and the Senate Committee to which it was

referred,[2] stated that that would be the ultimate result of passing the bill.

It cannot be denied that Senators Holland, Daniel and Long, as well as others, expressed the belief that their States could establish that their historic boundaries were three leagues from the coast. But, as we point out in our main brief (U. S. Br. 53, 393–395, 398, 402), it is also clear that even these Senators did not believe that the Act was deciding the States' claims as to extended boundaries; they, too, agreed that Congress was leaving the matter for future determination.

Senator Holland himself, in explaining his bill, made it perfectly clear that neither Texas nor Florida would receive three leagues under it unless they could sustain their three-league boundary claim. He said:

> * * * If under this resolution Florida and Texas receive property values out to the 3-league limit in the Gulf of Mexico, as I believe they should and will receive them, it will be because they can establish as a fact that Congress approved their 3-league outer boundaries as long ago as 1845 in the case of Texas and 1868 in the case of Florida. [99 Cong. Rec. 2746. See also 99 Cong. Rec. 2923, quoted *infra*, p. 92.]

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[2] The quotations from committee reports (Tex. Br. 35; Fla. Br. 23–24) are from reports on earlier legislation and do not refer to the bill which was then under consideration (S. Rept. No. 1592, 80th Cong., 2d Sess.; H. Rept. No. 1778, 80th Cong., 2d Sess.). The reference in the Texas Brief (p. 68) to the Senate Report on the Outer Continental Shelf Lands Act (S. Rept. No. 411, 83d Cong., 1st Sess.) does not specifically relate the 10½ mile line to boundaries fixed in the earlier Act. At most, the reference was an indication of what the committee believed would be the legal effect of the prior Act.

For many other comparable declarations by the sponsors of the measure, that it would not confirm the three-league claims of Texas or other States but would only leave them free to establish the validity of those claims if they could, see U. S. Br. 51–58 and Appendix E, 389–402.[3]

The testimony of Attorney General Brownell was not that the bill under consideration gave the States the rights they claimed, but, rather, that it would obviate constitutional questions and litigation, of the very type in which we are now engaged, for a grant of development rights to be made to a line fixed by Con-

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[3] The defendants cite a comment of the American Law Institute on page 22 of its Tentative Draft No. 2 of its Restatement of the Foreign Relations Law of the United States, as supporting the proposition that the Submerged Lands Act granted three leagues to "certain states" bordering the Gulf of Mexico (Jt. Br. 7–10, 56–57). The burden of the note is that claims to develop the bed of the sea on the continental shelf are not in conflict with the traditional United States position in favor of freedom of the seas and a three-mile limit. The draft suggests that a grant of the rights on the shelf to the States measured by a three-league boundary would also not be inconsistent with the national foreign policies. We have been informed by the reporter for this restatement that the language seized upon in the defendants' joint brief was inadvertently included in the comment. It was intended to state merely that, if such a grant were made, it would not be inconsistent with our foreign policy, with no intention of interpreting the Submerged Lands Act, a matter outside the Institute's purpose or policy. The specific language of the draft was not called to the attention of the membership in Washington, nor was the position of the United States in the present litigation brought to their attention in this connection, and the reporter does not regard the failure of anyone to except to the comment as approval. See letter from Adrian S. Fisher to the Solicitor General reprinted in the appendix to this brief, *infra*, pp. 97–98.

gress, which would be three leagues from shore in the case of Texas and Florida. Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess. 925–926, 931. The President's view, as well as that of Secretary of the Interior McKay (*id.* 526), was that the historic boundary of Texas was three leagues from shore (U. S. Br. 242–251).

On the other hand, it was recognized in Congress that the claim of the Gulf States to extended boundaries was in dispute. The Department of Justice had questioned the legality of boundaries of more than three miles in both the original Louisiana and Texas cases which gave rise to the legislation and which were so much in the Congressional consciousness that this Court's opinions were appended to the reports in both houses. Brief for the United States in *United States* v. *Texas,* No. 13, Original, Oct. Term 1949, pp. 49–52, 73–75; Brief for the United States in *United States* v. *Louisiana,* No. 12, Original, Oct. Term 1949, pp. 16–17. There had been introduced in the hearings before the Senate committee a letter from the State Department addressed to Senator Connally specifically dealing with the extent of the Texas boundary in the Gulf of Mexico and stating that nothing beyond three miles could be recognized (Letter from Under Secretary of State Webb to Senator Tom Connally, December 30, 1949. Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 321–323).

Other statements at the hearings, attacking the claim, included the following:

Senator ANDERSON. We will have a strong argument about whether they [the United States and Mexico, in the Treaty of Guadalupe Hidalgo] put it 3 leagues out in the Gulf and followed it around the coast, or whether they started with a point 3 leagues out at sea in order to mark a line between two nations, not establishing a State boundary. [Senate Interior Committee Hearings on S. J. Res. 13, etc., 83d Cong., 1st Sess., 207.]

* * * * *

Senator ANDERSON. Under international law, the mere transmittal of a copy of a Boundary Act to other nations does not constitute in any way legal recognition of these boundaries by any nation, does it?

Senator DANIEL. There is a question on that, sir. [*Id.*, 213.]

* * * * *

Senator KEFAUVER. * * *

* * * There is considerable dispute over what are the historical boundaries. In the case of Texas and the west coast of Florida, they are claimed to be 10½ miles. [*Id.*, 834.]

* * * * *

Senator MURRAY. * * * I understand that the United States does not recognize the Treaty of Guadalupe Hidalgo as fixing the seaward boundary of Texas.

Mr. TATE [Deputy Legal Adviser, Department of State]. That is correct. * * * [*Id.*, 1081.]

* * * * *

Mr. WHITE [former Solicitor, Department of the Interior]. * * *

> Therefore, you have the interesting legal question, which the Court would probably have to decide if this were ever presented to the Supreme Court for decision and it was faced with the actual necessity of deciding where the boundary of Texas runs—you have the interesting question as to whether the consistent position which the United States has taken in its international relations since the annexation of Texas, to the effect that the seaward boundary of the United States—and, therefore, of the respective States bordering on the Gulf of Mexico—extends only 3 marine miles into the Gulf of Mexico, has affected the boundary of Texas. That would probably raise the question of whether the Federal Government, through that means, has effected an adjustment of the boundary of Texas under the specific provisions in the joint resolution of March 1, 1845. [*Id.*, 1135.]

The difference of opinion on the issue was pointed up by the Minority Views of the Committee which had conducted hearings on the bill. The conclusion of the minority was that even "Texas has no special claims—historical or constitutional." S. Rept. No. 133, Part 2, 83d Cong., 1st Sess., 23.

The validity of the Texan claim to three leagues was also challenged in the congressional debates. The debates on the original version of the Act in the House include the following:

> Mr. HAYS of Ohio. * * *
>
> * * * In the first place, it is not at all clear what validity there is in so-called historical boundaries advocated by the States of Texas,

> Florida, and Louisiana. The determination of these claims would involve years of litigation. * * * [99 Cong. Rec. 2502.]
>
> * * * * *
>
> Mr. PERKINS [of Kentucky]. Well, that is where she surrendered the 3 leagues when Texas was admitted to the Union on an equal footing with the other States. [*Id.*, 2534.]
>
> * * * * *
>
> Mr. MCCARTHY [of Minnesota]. * * *
>
> * * * The fiction has been developed here that somehow the claims of Texas to 10½ miles are much stronger than the claims of other States to the 3-mile limit. * * *
>
> * * * * *
>
> * * * Correspondence between the United States and other nations regarding this Texas claim is most enlightening. It fails to show that Texas has any strong historical claim 10½ miles seaward. [*Id.*, 2569.]

See also Representative McCarthy's critical analysis of the bases for the Texan claim, 99 Cong. Rec. 2513–2514, 2569. His conclusion was that the claim was unsound.

Texas' claim to three leagues was likewise specifically challenged in the Senate debates. See, for example, 99 Cong. Rec. 2893–2894, consisting almost entirely of an extensive attack on the Texan claim by Senator Anderson of New Mexico and Senator Douglas of Illinois. Senator Douglas concluded (99 Cong. Rec. 2895):

> At a future time and at greater length, I should like to argue with the Senator from

> Florida the question as to whether Congress did approve a 10½-mile limit either for Florida or for Texas. Just as in the case of King Charles' head, the question always seems to come up in these discussions.

In a further attack on the claims of Texas and Florida, he said, in part (99 Cong. Rec. 2916, and see *infra*, p. 91):

> There are also further legal questions that must be answered before the final effect of Senate Joint Resolution 13 in the matter of the 3 leagues can be determined. For instance, did the act of December 19, 1836, of the Congress of Texas, in legal effect give Texas a boundary 3 leagues from land, or was it purely a unilateral action of that Republic, not recognized by any treaty or agreement with other nations?

See also 99 Cong. Rec. 3033–3037, and H. Rept. No. 2515, 82d Cong., 2d Sess. (Jan. 2, 1953), *infra*, pp. 41–42.

And so Congress left the matter where it found it.[4] It is therefore quite incorrect to assert that the Congressional intent is being flouted by putting the issue to a judicial test. Indeed, those legislators who were most strongly of the opinion that the Gulf States would ultimately prevail indicated all along that Congress was not being asked to evaluate their claims.

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[4] Defendants purport to find support in refusals of Congress to adopt amendments specifically limiting the grant to three miles (Jt. Br. 25–29; Tex. Br. 41–46). But we do not assert that Congress intended to cut down the limit to three miles if the States could establish that their historic boundaries were three leagues out. Congress simply refused to pass on the claims, and left them for the courts.

Nothing in the brief, argument, or opinions in *Alabama* v. *Texas,* 347 U. S. 272, can reasonably be interpreted as supporting the defendants' present construction of the Submerged Lands Act (Jt. Br. 38, Tex. Br. 150). However phrased, the references in that case to the limits of the grant were mere assumptions for the purpose of analysis, not basic assertions or grounds for decision. The issue was the constitutionality of the grant of property seaward of ordinary low water in which the Federal Government had been held to have paramount rights because of its international obligations. The grant was upheld as a proper exercise of the Congressional power to dispose of property. The premise that Texas had a three-league boundary, used as a basis for the argument of Alabama that it was a denial of equal footing to grant a greater width of marginal sea to Texas than to Alabama, was not endorsed in any manner by the Government, and was certainly not passed upon by a majority of the Court. See American Law Institute, Restatement of the Foreign Relations Law of the United States, Tentative Draft No. 2, Comment d, page 23, *supra,* p. 6. And Alabama's further argument, inconsistent with its present brief, that a grant of more than three miles was illegal, was countered by the specific assertion by the United States that state boundaries must be limited by the national boundaries.[5]

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[5] The government brief stated:

"But as Alabama itself points out, the Submerged Lands Act (Section 2 (b), 3 (a)) grants the states lands and resources only within their historic boundaries (Paragraph XXXVII

It is also argued (Tex. Br. 145), in this connection, that the Submerged Lands Act recognizes a boundary of three leagues in the Gulf simply by making reference to that distance. This is clearly unsound. The restriction of the grant to a maximum distance of three leagues in the Gulf was not intended to guarantee a grant to that distance, but only to assure that in no event would the grant extend farther. It was added by a floor amendment introduced by Senator Holland, at the request both of Senators who favored the bill and of those who opposed it, to assure that in no event could the claims made by the States exceed those limits which they were already known to Congress to be claiming. 99 Cong. Rec. 4114–4116. As Senator Holland explained the amendment, "The words are words of limitation, not words of grant or release." 99 Cong. Rec. 4115.

Similarly, the defendants refer (Jt. Br. 141–142; Tex. Br. 57–59) to a memorandum inserted in the Congressional Record by Senator Cordon (99 Cong. Rec. 4382–4385) as supporting a congressional enlargement of the national boundary, if necessary, to accommodate the claims of three leagues by the Gulf

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[of the complaint]). Therefore, under the Act itself only three miles may be considered as granted, if Alabama is correct that that is the historic limit to the territory of the United States and therefore of the defendant States. The Act does not purport to establish a three-league boundary in the Gulf of Mexico if such boundary is inconsistent with historic practice and understanding." [Opposition of Defendants George M. Humphrey, Douglas McKay, Robert B. Anderson and Ivy Baker Priest to Complainant's Motion for Leave to File Complaint, pp. 31–32.]

States. This was not the purpose of the memorandum which was intended to buttress the power of Congress to grant submerged lands underlying the marginal belt, whatever its width, to the States. This Court had declared that such lands were an attribute of national sovereignty and had apparently avoided using proprietary terms with respect thereto, referring instead to "paramount rights" (*United States* v. *California,* 332 U. S. 19, 34–36). Senator Cordon was saying that if this holding could be properly construed as casting doubt on a territorial interest in the United States in the area, whatever its width, then the Submerged Lands Act made it clear that Congress was asserting proprietary rights. In talking about the area involved, the memorandum used the precise terms of the Act and did not say that a three-league line was being established. In view of Senator Cordon's often-repeated statements that it was not the purpose of the Act to fix boundaries, but to leave it to the courts to determine where they legally existed (see, *infra,* pp. 20–21; U. S. Br. 55, 389–393), this memorandum can hardly be deemed a recognition of an extension of the national boundary by the Submerged Lands Act.

Although we do not believe that the construction of the Act is doubtful, it should be borne in mind that, if it is considered ambiguous, it should be construed strictly against the grantee. This is so because the Court has for a long time held that statutes disposing of federal property, if they admit to different meanings, must be construed favorably to the United States. *Leavenworth, Lawrence, and Galveston Railroad Company* v. *United States,* 92 U. S. 733, 740;

Caldwell v. *United States*, 250 U. S. 14, 21; *United States* v. *Union Pacific R. Co.*, 353 U. S. 112, 116.

2. ***By the terms of the Submerged Lands Act, unless the Gulf States, as States of the United States, possessed extended boundaries at the time of their admission, the boundaries claimed by their predecessors do not help them***

(a). The defendant States argue that by reason of Section 4 of the Submerged Lands Act (U. S. Br. 337), which uses the words "prior to or at the time" of admission, any state whose constitution or laws prior to admission provided for a three-league boundary is granted that area under the Act (Jt. Br. 19, 20–31; Tex. Br. 23–26, 54–55; La. Br. 31; Fla. Br. 2). Actually, this argument, even if sound, would help only Texas since there is no claim that the predecessors of the other States had such constitutional or statutory definitions of boundary. But, as is pointed out in our main brief (U. S. Br. 47–51), this argument misconstrues the purpose of Section 4 of the Act and its relation to Sections 2 and 3. Section 3 is the granting clause and it turns over to each State the area described in Section 2 extending to boundaries "as they existed *at the time* such State became a member of the Union (emphasis added),"[6] or "as

[6] This same phrase occurs in Section 2 (a) (1), referring to nontidal waters "that were navigable under the laws of the United States at the time such State became a member of the Union * * *." 43 U. S. C., Supp. V, 1301 (a) (1). It is evident that that refers to the situation existing under federal law at the first moment of statehood; the same phrase should be given the same effect in Section 2 (a) (2) and 2 (b), referring to tidal waters.

extended or confirmed pursuant to section 4 * * *." The first part of Section 4 *approves and confirms* boundaries within the three-mile limit, and permits all States to extend their secured boundaries to that limit if they have not already done so. The last sentence adds (U. S. Br. 337):

> Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

Congress was thus clearly distinguishing between boundaries within the three-mile limit, which it approved and confirmed, and boundaries described as extending beyond that limit, which Congress merely provided were not to be deemed prejudiced by the confirmation of the others.

The last sentence of Section 4 is purely a saving clause primarily designed to negative an argument that Congress had passed adversely on the boundary claims of Texas and Florida when it approved a limit of three miles generally.[7] The defendants themselves appear to recognize this, for in their Joint Brief at page 18 they state, "Section 4 does not in itself confirm or extend boundaries beyond three geographical

[7] This saving clause, it should be noted, is not limited to three-league claims, but applies to all such claims in excess of three miles.

miles."[8] The function of this part of Section 4 as merely a saving clause preserving (for future adjudication or other purposes) whatever boundary claims any of the states may have is confirmed by reading the section's last two sentences together. The penultimate sentence (U. S. Br. 337) preserves without prejudice boundary claims beyond three miles (without limit) "heretofore or hereafter asserted." The last sentence (quoted above) preserves such claims (again without limit) "prior to or at the time such State became a member of the Union." Together, this portion of Section 4 simply saves boundary claims whenever made—prior to admission, at the time of admission, between admission and the passage of the Submerged Lands Act, subsequent to the passage of the Act. But this "saving" of a State's boundary claims—including their preservation for purposes other than those of the Submerged Lands Act—has nothing to do with the extent of the grant made by Congress in that Act—which was precisely defined in Section 3 and the first part of Section 4. See also U. S. Br. 49.

(b). In our main brief, pp. 47–51, we have discussed the meaning of the phrase *"at the time"* of admission, as used in the granting clauses of the Act. "At the time" does not mean "prior to the time"—as

[8] The argument (Tex. Br. 54) that the use of the past tense in the word "existed" in Section 2 is defined by the words "prior to" in Section 4 is plainly without foundation. If the thought intended in Section 2 had been to describe a condition antedating the date of admittance, itself a past act, Congress would certainly have used the words "had existed."

is shown in the Act itself by Congress' disjunctive use of the two phrases in the last sentence of Section 4, quoted above. See also footnote 6, *supra,* p. 16. "At the time such State became a member of the Union" means at the moment or instant the State became a State, with all of a State's rights and obligations—in other words, upon the admission of the State. When Congress desires to refer to the period immediately prior to statehood, it says so expressly. In the recent Act to provide for the admission of the State of Alaska, Pub. Law 85–508, 85th Cong., approved July 7, 1958, 72 Stat. 339, Congress made special provision for certain lands owned by the United States "immediately prior to the admission of said State." Section 11 (b), 72 Stat. 347.

3. The historic "boundaries" referred to in the Act were intended to be actual legal boundaries, not mere paper claims

Although Congress could have measured the extent of its grant of the submerged lands to the States in any way it chose, it did choose to limit the grant to State boundaries as they existed when the States entered the Union or as approved by Congress prior to the Submerged Lands Act. Since State boundaries cannot exceed the national boundary, the national boundary is necessarily an implicit limitation on the grant as Congress chose to define it.

The defendants argue (Jt. Br. 63; Tex. Br. 75) that if they establish that, at the critical period, there was a statutory or constitutional claim to an extended boundary, then Congress intended to grant up to that

limit whether or not the claim was valid in international law (as applied by the United States) or in accord with the national policy on foreign relations. This is so, the defendants assert, because the Act speaks solely in terms of State boundaries without any reference to national boundaries or international law.

As a matter of common usage, it would seem that Congress used the word "boundary" to connote a legally acceptable boundary, not a mere paper claim. A boundary which cannot be sustained is, in truth, not a boundary at all. However, it is not necessary to rely on common usage because the persons most closely connected with the drafting and passage of the Act made it clear that they were talking about "legal" not "paper" boundaries. During the debate in the Senate, Senator Douglas questioned Senator Cordon sharply on the location of the historic boundary of Texas. Senator Cordon stated:

> The States of the United States have legal boundaries. It is not a part of the power or the duty of Congress to make determination with reference to those boundaries, or where those boundaries should lie. It is a matter for the courts to determine, or for the United States, through Congress and the legislative organizations of the several States, to reach an agreement upon. The pending bill does not seek to invade either province. It leaves both exactly where it finds them. Whenever a question arises as to a boundary, it will be determined exactly as any other question in law is determined, and the boundary will be established. [99 Cong. Rec. 2620.]

And again in the same debate:

> Mr. DOUGLAS. Does the Senator from Oregon believe that if the proposed language is adopted Texas will have paramount rights in the submerged lands seaward from the low-water mark 10½ miles out?
>
> Mr. CORDON. Texas will have title out to its legal, existing boundary line.
>
> Mr. DOUGLAS. What is its legal boundary line?
>
> Mr. CORDON. If the Senator wants an answer to that question, he will have to get it from the Supreme Court. [99 Cong. Rec. 2621.]

The draftsman of the bill himself stated:

> Mr. HOLLAND. I think it would be fair to state in the beginning that each of the States has boundaries, according to the laws under which they came into the Union, and, except as changed in the very minor ways mentioned in section 4 of the joint resolution, the boundaries are the actual legal boundaries that are more loosely spoken of as historic boundaries. They have become historic because they have been for periods of years the legal boundaries of the several States. [99 Cong. Rec. 4094–4095.]

Senator Kuchel of California expressed the same view to the Senate Committee considering the bill when he stated as the purpose of the bill "that we give back in this bill to the States of the American Union only that which they had legally at the time they entered the Union." Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 316.

4. *The term "boundary" was intended to refer to the seaward limit of the territory in which the States exercised general jurisdiction or sovereignty*

At various points in their briefs, the defendants suggest that, in limiting the States to their historic boundaries, Congress was not using the term in the sense of the outer limit of their territorial seas but with reference to their then claims to the seabed of the continental shelf or to some other flexible area where special jurisdiction was exercised (Jt. Br. App. 175–177, Tex. Br. 140–143). For instance, Texas argues (Tex. Br. 131–139) that a nation may exercise jurisdiction over the sea or seabed for different distances for different purposes. With that we fully agree. Texas then concludes (as do the other defendants) that each of those limits is a "boundary" as that term is used in the Submerged Lands Act. With that we must disagree.

The first answer is the obvious one that at the time the States bordering the Gulf of Mexico joined the Union there was little interest in, and no claim to, property rights in the seabed as such. As this Court stated in *United States* v. *California,* 332 U. S. 19, at 32–33:

> Those who settled this country were interested in lands upon which to live, and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth.

Therefore, even if the defendants were right in asserting that Congress used the term "boundaries" in a special sense to refer to the extent of historic claims to the continental shelf, they have hurt rather than helped their case since they have presented no references to show any historic claims in the 19th century to the continental shelf at all.

Actually, however, it is quite clear that Congress used the term "boundary" in its usual sense to mean the limit of territory, which, in the case of a coastal boundary, would mean the outer limit of the territorial sea. It is by no means usual terminology to refer to extended limits of special jurisdiction, such as the limited customs jurisdiction which the United States has long exercised to a distance of four leagues,[9] as national "boundaries" in any sense. In common usage, a nation's boundary is where its general jurisdiction ends, and Senator Holland, the author of the Submerged Lands Act, made it perfectly clear that he had used the term in that sense:

> But the language of the bill is perfectly clear in that it is the constitutional boundaries, and it is the historic boundaries, and it is a case of restoration and establishment to States of what lie within their boundaries of jurisdiction, of criminal law and of various other kinds of law, boundaries which fix the venues of cases which arise. [Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 48.]

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[9] Act of March 2, 1799, Sec. 54, 1 Stat. 627, 668; R. S. § 3067; Anti-Smuggling Act of 1935, Secs. 201, 203, 49 Stat. 521, 19 U. S. C. 1401 (m), 1581.

Senator Daniel of Texas, a co-sponsor of the Act, explained it similarly when he said, "there is no question but that the Holland bill simply gives to the States the lands within their original boundaries—within their territorial waters—at the time they entered the Union." *Ibid.*, 326.

As a variant of the argument just answered, it is also stated by the defendants that there is a legal distinction between the term "boundary" and the outer limit of the territorial sea (Jt. Br. 68–128; Tex. Br. 145–147). However, the terms are used interchangeably; a boundary is the limit of a nation's territory; and, since territorial sea is considered as part of a nation's territory, the boundary of one is the boundary of the other. Jack B. Tate, Deputy Legal Adviser of the Department of State, clearly explained to the Senate Committee the distinction drawn between this nation's claim of sovereignty over a three-mile belt of territorial waters, and its special jurisdiction over the resources of the continental shelf beyond that limit.[10]

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[10] Texas refers (Tex. Br. 138–139) to an article by Raymund T. Yingling, Assistant Legal Adviser of the State Department, which suggests that so far as jurisdiction over the continental shelf is concerned, "the distinctions between sovereignty, sovereign rights, and exclusive jurisdiction and control are perhaps not of great practical importance." American Bar Association, Section of International and Comparative Law Bulletin, July 1958, page 10 at page 19. That much may be conceded, although it is a distinction that the United States has always scrupulously maintained; but it by no means follows that the term "State boundary," appropriate to describe the limits of territorial sovereignty, is equally appropriate to describe the limit of an area of special jurisdiction exercised by the National Government.

Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 1055–1056. It is evident that Congress, in using the term "boundary," referred to the limit of territorial sovereignty. Throughout the hearings and debates runs the common assumption that the term "boundary", when used with respect to the coast, is equivalent to the limits of the maritime belt or territorial waters. There was no dissent from that proposition.

Since the defendants refer (Jt. Br. 59, 128; Tex. Br. 146–147) to the intention of the Secretary of State in the language he used in his letter on which we rely (U. S. Br. 342), we have asked the Secretary of State for a statement as to his actual intent. We refer the Court to the reply, Appendix, *infra,* pp. 98–99, which disclaims any intention to draw the alleged distinctions.

B. THE THREE-MILE MARITIME BOUNDARY OF THE UNITED STATES, AND THE UNITED STATES POLICY OF RECOGNIZING ONLY THREE MILES FOR OTHER COUNTRIES, PLACED A LIMIT OF THREE MILES ON THE BOUNDARY OF EACH DEFENDANT STATE AT THE TIME IT ENTERED THE UNION

1. *The rule of international law which limits the grant in the Submerged Lands Act is determined by the foreign policy actually followed by the United States at the critical times, not a policy which it is now asserted could have been followed legally by this country*

The defendant States have presented extended argument that the three-mile limit was not universally accepted by all nations at the time that the Republic of Texas wrote the three-league limit into its statutes or at the times when the Gulf States joined the

Union (Jt. Br. 72–84). The history of the origin, growth, and general acceptance of the three-mile limit for territorial waters was extensively briefed and argued before this Court in the original submerged lands case, *United States* v. *California,* 332 U. S. 19. On the basis of a full presentation this Court found (332 U. S. at 33):

> It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite marginal zone to protect our neutrality. Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world, although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See *The Queen* v. *Keyn,* 2 Ex. D. 63. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co.* v. *Mellon,* 262 U. S. 100, 122–124. And this assertion of national dominion over the three-mile belt is binding upon this Court. See *Jones* v. *United States,* 137 U. S. 202, 212–214; *In re Cooper,* 143 U. S. 472, 502–503.

In this case, however, we are not concerned with what the United States could under international law have claimed for itself or refused to recognize for others, but only what were its actual claims and what were the limitations it imposed on its recognition of

claims by others. Therefore, we pass over without comment the pages of citation and quotation which have been presented to the Court to establish that Spain[11] or Mexico[12] asserted claims of more than three miles and that publicists supported the legality of such assertions. These materials are irrelevant to a case which is concerned with the actual historical position of the United States.

Again, it is said that the function of this Court is to act as an international tribunal would in settling a dispute between nations in order to determine what is the law of nations (Tex. Br. 130; cf. Jt. Br. 69). This, too, is erroneous. We have cited in our main brief the authorities which show conclusively that the function of this Court is merely to determine what the political branches of the Government have adopted as the foreign policy of the United States and then to apply that policy to the issues before it. In other words, it is the Court's role to find and apply the pertinent rule of international law as accepted and applied by the United States. (U. S. Br. 127–147).

The defendants have misconstrued our argument as to the weight to be given the statement of the Secre-

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[11] The claims of Spain were considerably less consistent, and far less related to the width of its territorial sea as such, than the defendants would have the Court believe. *Infra*, pp. 48, 86–90. Certainly, as to the coast of the Gulf of Mexico, neither Spain nor France made any specific claim to a marginal sea. See U. S. Br. 154–171.

[12] As statutes cited by Texas' own expert demonstrate, until 1935 Mexico claimed a territorial sea of only three miles. See Memorandum of Santiago Oñate, Tex. Br. 196–197.

tary of State regarding the foreign policy of the United States. We have not claimed, as the defendants appear to assert (Jt. Br. 59; Tex. Br. 72), that the Court is bound on the issue of whether foreign policy is pertinent to the issues before the Court. We have asserted, and supported the assertion with ample authority (U. S. Br. 127–140), that when a question arises as to what our foreign policy is, or has been, then the courts will accept the determinations of the political branches of the Government. We have also pointed out that an issue as to location of boundaries—the extent of territory—has been considered to be such an issue (U. S. Br. 140–147). The fact that the issue arises in a domestic conflict in which foreign governments have no direct interest does not change the function of the United States courts. If the resolution of a domestic issue depends upon a determination on foreign relations, the courts will accept solutions made by the other arms of the Government. *Williams* v. *Suffolk Insurance Company,* 13 Pet. 415; *Jones* v. *United States,* 137 U. S. 202; *United State* v. *Belmont,* 301 U. S. 324; *United States* v. *Pink,* 315 U. S. 203.

In defining the state and federal rights to develop the resources of the continental shelf, Congress deliberately chose a line of division which depends on "boundaries." This is a political issue within the control of the legislature and the executive. While Congress could have given the States the entire shelf, or a part of it out to three miles or three leagues, it chose as a yardstick the boundaries of the states; these, in

turn, depend upon the boundaries of the United States. Thus, the domestic issue was deliberately made by Congress to depend upon the foreign relations of the United States, and on this the courts will accept the word of those vested with authority over foreign relations (U. S. Br. 127–151).

2. *At the critical times, the United States foreign policy set a maximum, as well as a minimum, limit of three miles both as to its own territory and for its recognition of the territory of foreign nations*

The defendants are quite right in their assertion that the critical period of foreign policy for the purpose of determining their historic boundaries is that which surrounds the time of their admission (Jt. Br. 72–74). However, as the expert for the defendants, Prof. Louis B. Sohn, himself points out:

> Consequently, in trying to decide upon the validity or not of each State act, one has to determine first what was the rule of international law applicable to the act at the time that act was enacted or approved. Later authorities can be used only when it is clear that there has been no change either in the rule or its scope, or where a later authority has dealt with the matter from the point of view not of its own time but in a historical manner, in the light of the rules of the period in which the relevant facts occurred. Of course, it may be difficult to pinpoint the existence of a particular rule at a certain date and for that reason it is generally permissible to consider such contemporary sources of law as are not too far removed in time and spirit from the crucial

> date. On the other hand, there may be cases in which certain principles have persisted for such a long time without any change that it is not necessary to prove their existence at a particular time. In such a case the burden of proof would be on the party trying to persuade the Court that at a particular point in time there was a temporary departure from the general principle. [Jt. Br., Exhibit I, pp. 149–150.]

The authorities we cite in our main brief (U. S. Br. 59–102) are not far removed from the crucial time (and we shall cite others below, *infra*, pp. 32–34, which are even closer); the more recent statements deal with the issue, not only contemporaneously but also historically; and the policy on which we rely has been so consistently followed over a long period that certainly the burden is on the defendants to demonstrate a departure from it.

The defendants attack our statement of the United States' policy first of all on the ground that it was merely a tentative policy adopted for the time being with the reservation of full freedom to claim a wider area in the future (Jt. Br. 110–119). While this was of course true of Jefferson's original declaration in 1793, the fact is that neither during the ensuing nineteen years before the first of the critical dates (1812) nor in the fifty-two years before the admission of Texas and Florida (1845) was either the statement of policy or the statute implementing it (1 Stat. 384) changed or extended to a more extensive belt. Rather, it was repeated in the contemporary correspondence and treaties (U. S. Br. 63–67) and in later diplomatic

correspondence was recognized as being established during that period (U. S. Br. 67–94). Any rule of international law must have its beginning, and it was only prudent for this country initially to leave room for change; but the historical fact is that up to and including the rejection of Communist China's claim to twelve miles in September of this year (*Washington Post and Times Herald,* September 5, 1958, p. 1), the original Jefferson policy has stood unchanged and we have neither claimed a wider belt nor recognized such a claim by other nations.

The second attack by the defendants on our statement of the American foreign policy is that it was a claim as to the minimum width and did not fix the maximum claim for the United States nor the limit which the United States would recognize for other countries. Again, Jefferson's initial statement in 1793 does not contain in itself the entire matured position of the United States. It was just the beginning. But early in Jefferson's own administration we "told Spain that we conceded to her, so far as concerned Cuba, the same limit of territorial waters as we claimed for ourselves, granting nothing more * * *." 1 Moore, *Digest of International Law* (1906) 720. And in 1849 the Secretary of State was making use of the three-mile limit without any suggestion that it was a minimum figure (*ibid.,* 705). Actually, the suggestion that three miles was the minimum for our claim is merely another way of stating that as a start, at least, we retained the right to make more extensive claims later. There is no room for a maximum and

minimum claim at the same time except to distinguish between the territory we claim for ourselves and the territorial claims we will recognize for foreign countries. As we have pointed out, it soon developed that these two limits were the same in the eyes of the United States.

Nor does the argument that the foreign policy on which we rely is limited to the seizure of shipping in time of war, or the protection of our shores from incidents of war, distinguish the precedents. Although the early applications of the three-mile limit did in fact arise in the context of war, the policy adopted was in no wise limited to wartime conditions. Rather, general sovereignty over the three-mile territorial sea was asserted as the basis for defining the international rights involved. And very soon, of course, the limit was equally applied to fishing (8 Stat. 249) and to shipping generally. There was no occasion to make an application of the principle to the resources of the continental shelf.

Professor Sohn, in his portion of the brief (Jt. Br. Exhibit I, p. 170), suggests that there is an "important gap" for the crucial years 1818–1848 insofar as evidence of the United States policy is concerned. While the absence of statements in those particular years, when preceded and succeeded by a line of consistent declarations, would not seem to us as significant as it apparently seems to the defendants, there were in fact precedents even in that period. In 1826, this Court in *The Marianna Flora,* 11 Wheat. 1, 43, recognized the cannon-shot rule of territorial jurisdiction, which at that time was considered the equivalent of

three miles (U. S. Br. 63, 68).[13] The case before the Court dealt with the right of one ship to approach another on the high seas and an argument was made that a ship carried about itself a protective belt analogous to the territorial waters off a nation's shores. This Court commented:

> This doctrine appears to us novel, and is not supported by any authority. It goes to establish upon the ocean a territorial jurisdiction, like that which is claimed by all nations, within cannon-shot of their shores, in virtue of their general sovereignty. * * *

The same definite rule was referred to as established in a letter dated August 1, 1842, from Daniel Webster, as Secretary of State, addressed to Lord Ashburton, acting for a British Special Mission, when he said:

> A vessel on the high seas, beyond the distance of a marine league from the shore, is regarded

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[13] Apparently to support the view that cannon shot equalled three *leagues*, Texas quotes and translates a passage appearing in numerous editions of Martens, *Précis du Droit des Gens Moderne de l'Europe fondé sur les Traités et l'Usage*, to the effect that all European nations agree on ownership of the adjacent sea at least up to the range of cannon fire, followed by a sentence which Texas translates, "In many treaties they have even adopted the more generalized principle of three leagues." Tex. Br. 203, 206, 209, 216, 217. The original of the latter sentence is, "Dans nombre de traités on a même adopté le principe plus étendu des trois lieues." A more accurate translation would be, "the more *extended* principle," and the passage is so translated by Louisiana and Florida. La. Br. 56; Fla. Br., App. 88. Cf. Martens, *Einleitung in das positive Europäische Völkerrecht* (1796) 46, fn. b, regarding three-league treaty provisions, "the range of no cannon is that far, especially over the sea" ("keine Canone, zumahl über See, so weit trägt"). Tex. Br. 202.

> as part of the territory of the nation to which she belongs, and subjected, exclusively, to the jurisdiction of that nation. * * * [S. Doc. No. 1, 27th Cong., 3d Sess., page 117.]

(We refer to these two examples of American recognition of the three-mile rule not as being of any peculiar significance, but merely to rebut the assertion that a gap appeared during the crucial period.)

Although we reassert the position taken in our main brief (U. S. Br. 132–138) that the Court should accept the statement of the Secretary of State as to what the policy of the United States has always been on this vital element of foreign policy, it appears independently from an examination of the history of the doctrine that the Secretary of State was fully justified in his assertion that the United States has from the earliest days consistently adhered to the three-mile limit.[14]

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[14] The defendants refer to the Alaskan cession treaty of March 18/30, 1867, 15 Stat. 539, and to the Act of July 27, 1868, 15 Stat. 240, as asserting jurisdiction over "approximately one-half of the Bering Sea with areas in excess of 400 miles from the nearest island." Jt. Br. 126–127. However, the treaty merely drew a line through Bering Sea, east of which it transferred the Russian territory on the *islands and continent* of North America; it did not purport to transfer the sea itself. The 1868 Act (R. S. § 1956) merely referred to the waters of the Alaska Territory, without describing them; Congress rejected an attempt to make it specifically applicable to all the waters east of the boundary line. See 1 Moore, *Digest of International Law* (1906) 894. Both before and during the Fur Seal Arbitration of 1893 the United States disclaimed territorial jurisdiction over Bering Sea outside the three-mile limit. See letters of Secretary of State James G. Blaine to Sir Julian Pauncefote, the British Minister, January 22 and December 17, 1890 (*Foreign Relations of the United States* (1890), 366 and 477

3. *The United States has not recognized a three-league limit in the Gulf of Mexico*

In addition to their discussions of international law generally and of the national boundary of the United States on all coasts, the defendants also assert that the United States has recognized a three-league territorial sea in the Gulf of Mexico specifically.

(a). In support of this proposition, the defendants first assert that the geographic nature of the submerged lands along the coast of the Gulf justifies a maximum claim (Jt. Br. 88–91). It is not necessary to examine this allegation because the question is not whether the United States had a justifiable basis for claiming three leagues if it wished to, but whether it has in fact done so. We deny that it has, regardless of whether or not it could have.

(b). The defendants then assert that our predecessors in title claimed territory extending more than three leagues into the sea, the theory apparantly being that the United States inherited all of their territory. We shall answer some of these claims in greater detail below (pp. 46–48, 63–78, 86–90, *infra*). Suffice it here to say that the defendants are in error in asserting an extended French claim, on the basis of LaSalle's proclamation, which did not in fact extend beyond the shoreline; that the Spanish colonial claims were not consistent nor in most cases related to territorial sovereignty as such; and that the proclamation of

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at 495–496, 500–501), and the oral argument of James C. Carter for the United States (12 *Fur Seal Arbitration. Proceedings of the Tribunal of Arbitration at Paris, 1893*, 107–116). See U. S. Br. 174–175.

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George III in 1763, claiming for Great Britain all islands within six leagues of the coast, cannot properly be construed as a claim to a six-league belt. See also U. S. Br. 172–176. In any event, we are concerned with the national boundary of the United States as such and, whatever the limits claimed by its predecessors in possession, they were reduced to three miles at the time of acquisition, unless the United States itself made a special exception from its regular three-mile limitation for its boundary in the Gulf of Mexico. This it did not do.

The Treaty of Paris (Louisiana Purchase) in 1803, 8 Stat. 200, by which the United States acquired a portion of the territory in question, made no specific reference to the territorial sea and the reference in Art. II to "adjacent islands" carries no implication that any water area was included. In three successive treaties, first, with Spain in 1819 (8 Stat. 252, 254–256), second, with Mexico in 1828 (8 Stat. 372–374) and third, by reference, with the Republic of Texas in 1838 (8 Stat. 511), the United States and the other contracting parties recognized the boundary between Louisiana and Texas as beginning "on the gulf of Mexico, at the mouth of the river Sabine, in the sea".[15] There was clearly no assertion by the United States of a three-league belt.

We shall deal below, in the portion of this brief devoted specifically to the Texas claims, with the effect of the boundary statute of the Republic of Texas, our

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[15] The defendants erroneously refer to this as beginning "*off*" the mouth of the Sabine. Jt. Br. 95.

recognition of the republic, and the admission of Texas to statehood, *infra,* pp. 63-80. Here it is only necessary to state that none of the details in connection with our relations with Texas give any indication of an intent to abandon a foreign policy which was then of fifty years standing in order to adopt a conflicting claim of less than ten years standing. And the United States has, since the admission of Texas, strongly denied adopting its asserted three-league boundary. See Letter of Under Secretary of State James E. Webb to Senator Connally, dated December 30, 1949, quoted in our main brief, pp. 93–94.

(c). The main prop for asserting a United States boundary three leagues from shore in the Gulf of Mexico is the Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848. 9 Stat. 922. Article V of that treaty states, "The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande * * *." The same language was repeated in the later Treaty with Mexico of 1853, the Gadsden Purchase, 10 Stat. 1031.[16] The

[16] The defendants seem to find some comfort in the various appropriation acts under which funds were supplied to survey the boundary with Mexico (Jt. Br. 101) and in the International Boundary Conventions between the United States and Mexico (Jt. Br. 102–103). These do relate to the boundary as established by Guadalupe Hidalgo and revised in the Gadsden Purchase. However, none of them repeats the definition in Guadalupe Hidalgo on which the defendants rely.

We have attempted to check the arithmetic of the defendants' computations on page 106 of the Joint Brief. Of the 16 statutes, so far as we can tell, eight refer to the creation of the territory of Orleans, and the various acts surrounding

defendants seize upon this provision as establishing their claim. Actually, it does not, in terms, establish any boundary along the coast and it was interpreted by both parties to the treaty as not having that result.[17]

In construing treaties, it is important to look not only to their language but to the intention of the contracting parties. *Wright* v. *Henkel,* 190 U. S. 40; *Rocca* v. *Thompson,* 223 U. S. 317; *Sullivan* v. *Kidd,* 254 U. S. 433. The contracting parties, Mexico and the United States, were concerned not with defining their marginal seas, but with drawing a line of separation from each other. The line defined is merely an extension of the division between their lands, reaching three leagues into the sea. It is pertinent because of the inference that what it separates is *territory* of United States and Mexico. But the explanation, made early by our Government and since re-

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the admission of the states of Louisiana, Mississippi, and Alabama. Seven are appropriation acts with relation to the survey of the Mexican boundary. One was the readmission of the representatives of Florida to Congress after the Civil War. Not one of these acts makes a specific reference to a three-league belt. The 12 treaties and conventions mentioned by defendants appear to be Guadalupe Hidalgo and the Gadsden Purchase and ten international boundary conventions. The Presidential proclamation is a boundary proclamation affirming the boundary established by the Gadsden Purchase. These add nothing to Guadalupe Hidalgo itself.

[17] It was with specific reference to the waters of the Gulf at the mouth of the Rio Grande that the statement was written by the Secretary of the Navy, and transmitted to Great Britain by the Secretary of State, that "I do not understand our government to claim * * * the right to exercise exclusive jurisdiction to the extent of more than a marine league from our coast." U. S. Br. 70–71.

iterated, is that this three-league line separated not *territory,* but areas in which the contracting parties saved the right to exercise extraterritorial regulation with respect to customs and smuggling. *Foreign Relations of the United States* (1875 Pt. I) 649–650; 99 Cong. Rec. 3623–3624.[18]

It is significant that neither party to the treaty (at least until Mexico claimed a wider belt in 1935) considered that the treaty established a three-league belt. As we point out in our main brief (U. S. Br. 65–66), Secretary of State Buchanan replied to a protest by Great Britain in the very year that the treaty was made, denying that it had any effect except as between Mexico and the United States. This clearly implied a denial of territorial claims since those would have to be made good against the world.[19] And

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[18] The need for some such arrangement seems to have been foreshadowed by a letter of May 8, 1844, from William S. Murphy, American Chargé d'Affaires in Texas, to Secretary of State John C. Calhoun, in which he said:

> I heard last evening by private traders from Corpus Christie, that a small party of Mexican troops, sent to the Rio Grande, to suppress smuggling, had been attacked on the 2nd Inst. by a body of Texan traders, and that 16. of the Mexican Soldiers were slain, and the remainder dispersed. I informed Mr. Thompson of the fact, that he might use it to strengthen the views of my Government with that of Mexico, in relation to a fixed and well guarded boundary between the two Nations in all future time. [12 Manning, *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860* (1939) 351.]

[19] The defendants point out that Great Britain did not renew the protest when the same language was incorporated in the Gadsden Treaty (Jt. Br. 101). This is certainly not significant since the explanation that territory was not involved would presumably apply to a repetition of the same provision.

Mexico made a similar reply to a similar protest from Great Britain, which we have set forth in full at pages 403–404 of our main brief. These two practically contemporaneous statements should be conclusive.

The later position of the two countries was consistent with their contemporaneously stated intent. We have already referred to the letter which Secretary of State Hamilton Fish wrote to the British Minister in 1875, and the letter Under Secretary Webb wrote to Senator Connally dealing with this particular matter. *Supra,* p. 37, U. S. Br. 72–73, 92–94. As for Mexico, as recently as 1902 it adopted a Decree on Regime of Federal Real property which included the following:

> Art. 4. In the public domain or of common use under the Federation are the following:
>
> I. The territorial sea to the distance of three marine miles, counted from the line of lowest tide on the coast or on the shores of the islands that form part of the national territory.[20]

This remained in effect until August 29, 1935, when a presidential decree undertook to extend the Mexican territorial waters to nine miles (U. S. Br. 84).[21] It is evident that until 1935 Mexico did not consider that its maritime boundary extended more than three miles

[20] Decreto sobre Clasificación y Régimen de Bienes Inmuebles de Propiedad Federal. 18 de diciembre de 1902.

Art. 4. Son bienes de dominio público ó de uso común dependientes de la Federación, los siguientes:

I. El mar territorial hasta la distancia de tres millas marítimas, contadas desde la línea de la marea más baja en la costa firme ó en las riberas de las islas que forman parte del territorio nacional. [34 Legislación Mexicana 1001.]

[21] As is pointed out in our main brief, the United States objected to this extension and reaffirmed its position on the

from the coast under the Treaty of Guadalupe Hidalgo.[22]

(d). A congressional committee has recently decided, after study, that Texas shares the national three-mile boundary. Pursuant to House Resolution 676 of the 82d Congress, 2d Session, a subcommittee of the House Interior Committee was appointed—

> to conduct a full and complete investigation and study of the seaward boundaries of the States and the continental United States and the Territory of Alaska in order to determine the proper criteria for fixing the seaward limits of the inland or internal waters of the United States, and the seaward boundaries of the United States and Alaska. [98 Cong. Rec. 9231.]

The report of that subcommittee (H. Report No. 2515, 82d Cong., 2d Sess., Jan. 2, 1953) dealt chiefly with the delimitation of inland waters (as to which it recommended further study, looking toward congressional

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proper interpretation of the Treaty of Guadalupe Hidalgo. See U. S. Br. 84–89. It is now asserted at page 104 of the Joint Brief that the State Department "admitted that Mexican territorial waters extended three leagues from land in the Gulf of Mexico by virtue of the terms of the Treaty of Guadalupe Hidalgo, * * *." That this is not so was pointed out in some detail in footnote 21 on page 89 of our main brief. The defendants ignore this, just as they ignore Under Secretary of State Webb's letter to Senator Connally (*supra*, pp. 8, 37) which supports our interpretation.

[22] By a regulation of July 26, 1851, Mexico had even directed its revenue cutters to confine their operations to within *two* miles of the coast except when prevented by bad weather or in case of pursuit. 6 Legislación Mexicana 106–107.

establishment of criteria to be followed by a technical commission in recommending boundary lines to Congress). With respect to the width of the marginal belt, however, it contained the following (pp. 4–5):

> For the purposes at hand, the width of the marginal belt is to be regarded as a constant factor: it is three nautical miles wide.[1] This 3-mile protective belt is measured from the seaward limit of inland waters, or where there are no inland waters, from the low-water mark on the shoreline (*United States* v. *California,* 332 U. S. 19 (1947)).
>
> Witnesses at the New Orleans hearings urged a substantial increase in the width of the marginal belt. Consideration of that question does not seem to be within the scope of this subcommittee's investigation. However, the question is of such paramount importance that we recommend that future legislation for continuance of this study in the next Congress include authorization to inquire into and consider action on the question of increasing our marginal belt.
>
> [1] Congressman Regan and Congressman Bentsen of Texas assert that the marginal belt of Texas is 3 leagues.

Thus it appears that this subcommittee, after studying the subject, concluded that Texas' claim to a present three-league boundary was not maintainable.

(e). The final answer to the defendants' claim that the United States has or had a boundary of three leagues in the Gulf of Mexico is found in the letters from the Secretary of State included as appendices to our main brief at pages 342–347. Secretary of State Dulles stated (U. S. Br. 345):

> The position of the United States on the three-mile limit has remained unchanged to this day, and at no time has this Government followed a different policy regarding the extent of its territorial waters in the Gulf of Mexico.

Under the authorities cited in our main brief at pages 127 to 151, this statement by the spokesman for the Executive should be accepted as conclusive by the Court.

II

THE SUBMERGED LANDS ACT GRANTS LOUISIANA NO RIGHTS BEYOND THE THREE-MILE LIMIT

A. LOUISIANA DID NOT HAVE A BOUNDARY THREE LEAGUES FROM THE COAST WHEN IT BECAME A MEMBER OF THE UNION

Under the Submerged Lands Act, no State received more than three miles unless it had a boundary exceeding that distance which existed when the State became a member of the Union or which was approved by Congress before May 22, 1953. Louisiana attempts to meet that requirement by pointing to its Enabling Act and Act of Admission, both of which described the State as "including all islands within three leagues of the coast." In our view, that language meant only what it said, and did not describe water or submerged land, either landward of the islands or seaward to a distance of three leagues (U. S. Br. 172–177).

However, just as a bay within headlands is included within a State or country as inland water, by general principles of law, even if not specifically described, so water may be sufficiently enclosed by islands so that the same result follows. That is the case along the coast of Louisiana, Mississippi and

Alabama. Consequently, the water and submerged lands between Louisiana's islands and the mainland have belonged to the State ever since its entry into the Union, under the doctrine of *Pollard* v. *Hagan,* 3 How. 212. They were not part of the area awarded to the United States in *United States* v. *Louisiana,* 339 U. S. 699, and the United States has never claimed them as such.[23]

Under Louisiana's view (La. Br. 15), that its only right to the waters between the islands and the mainland is that they are part of a three-league marginal belt, the waters would have the status of territorial waters, in which foreign merchant ships have a right of innocent passage.[24] But as Louisiana itself points out (La. Br. 19), this Court has held the waters landward of the islands to be *inland* waters. *Louisiana* v.

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[23] Louisiana's assertion (La. Br. 15) that we originally took a different position is incorrect. The same "coast line" for which we now contend—low-water mark along the open Gulf and the outer limit of inland waters—was shown on charts submitted to Louisiana on March 16, 1951, as the landward limit of the area for which we requested an accounting under the decree of December 11, 1950, 340 U. S. 899. Louisiana submitted a statement of receipts on that basis on July 23, 1951, although reserving objections to the line. See testimony of John L. Madden, Assistant Attorney General of Louisiana, in Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 271–272, referring to this episode. The same line was used in the interim agreement between the United States and Louisiana, as shown on Exhibit "A" thereto, filed in this case on October 12, 1956.

[24] We recognize, of course, that in large part those waters are too shallow for navigation. We are here discussing legal status rather than actual physical conditions.

Mississippi, 202 U. S. 1. In inland waters, no such right of passage exists. That distinction was clearly appreciated by the Court, for it specifically relied on the status of the waters as inland waters, as justification for following the thalweg in fixing the Louisiana-Mississippi boundary through them. 202 U. S. at 48–53. That case was concerned only with drawing the "eastern" boundary of Louisiana (*i. e.,* its common boundary with Mississippi) through inland waters to the Gulf of Mexico. It did not trace the boundary across the marginal belt in the Gulf, or along the outer edge of that belt; we find nothing in the case to justify Louisiana's assertion (La. Br. 22) that the Court said the southern boundary of Louisiana lay three leagues or more seaward from the shore. The southern boundary was not in issue and was not discussed.

Louisiana's assertion that Spain and the United States fixed their common boundary corner "three leagues in the sea" by the Treaty of Limits of 1819 (La. Br. 19) is refuted by the very passage which the State quotes. Three leagues was not mentioned; the boundary began "on the Gulph of Mexico, at the mouth of the River Sabine in the sea." Neither was Texas' boundary recognized as three leagues in the Gulf, in *United States* v. *Texas,* 162 U. S. 1 (La. Br. 22). That case involved the question of whether "Greer County" was part of Texas or of the Indian Territory. And even if the Court had recognized the Texan three-league claim, that would not establish a similar boundary for Louisiana.

B. LOUISIANA DID NOT HAVE A BOUNDARY MORE THAN THREE MILES FROM THE COAST PRIOR TO STATEHOOD

Boundaries that existed prior to a State's entry into the Union are not a measure of the grant made by the Submerged Lands Act; Section 4 merely provides that such boundary claims are not prejudiced by the Act (U. S. Br. 47–51; *supra,* pp. 16–19). Section 3 grants rights measured by boundaries as they existed "at the time" of entry into the Union. We understand that to mean "upon entry" or "at the first instant of Statehood" (U. S. Br. 47–51; *supra,* pp. 18–19); but certainly the earliest it could possibly cover would be "immediately prior to" entry. Even so construed, it can be of no help to Louisiana, which was a Territory of the United States prior to its entry into the Union. 2 Stat. 283. As a Territory it was wholly subject to the laws and policies of the United States which included, as we have shown, a consistent policy not to claim boundaries more than three miles from the coast.

Boundaries claimed by France or Spain, whose dominion over Louisiana ended many years before its entry into the Union in 1812, did not in any sense "exist at the time" of such entry. But even if such claims would be material, it cannot be established that either France or Spain claimed territorial boundaries more than three miles from the coast of Louisiana. Louisiana's assertion that La Salle claimed all the area "south of the mouth of the Mississippi" (La. Br. 35) is contradicted by the terms of his proclamation, which claimed "this country of Louisiana, seas,

harbors, ports, bays, adjacent straits * * * *comprehended in the extent of the said Louisiana,* from the mouth of the great river Saint Louis [Ohio] * * * as also along the river Colbert, or Mississippi * * * from its source * * * *as far as its mouth* in the sea or gulf of Mexico, about 27 degrees of the elevation of the north pole * * *." (U. S. Br. 154–155; emphasis added.) We have already shown that the reference to the 27th degree of latitude was an error (U. S. Br. 154–158); with that understanding, it is evident that the claim ended at the mouth of the Mississippi.

Louisiana refers (La. Br. 36) to various treaties to show that France claimed a territorial sea of at least three leagues for Louisiana; but none of them has any tendency to establish the existence of such a claim. They show only that France renounced certain fishing rights off British North American coasts, that Britain agreed its ships should not approach within ten leagues of Spanish settlements in the Pacific Ocean and the South Sea,[25] and that Spain claimed exclusive trading rights with its possessions. The French writers cited by Louisiana (La. Br. 37) show at the most that there was a great variety of opinion as to the rights which a nation could properly claim in its adjacent seas, and that France claimed a customs jurisdiction of five leagues. Since customs control may extend beyond territorial boundaries (U. S. Br. 109–110), this does not show any general territorial claim by France.

Louisiana is equally unsuccessful in showing a claim of territorial waters by Spain. Spanish claims

[25] See U. S. Br. 161–165.

are discussed *infra,* pages 86–90. The Ordinance of October 31, 1563 (*Groot Placaet-Boeck* ('s Graven-Hage, 1658) vol. 1, col. 805, art. 27), which Louisiana cites (La. Br. 40) as claiming the range of sight from the shores of Spain and its possessions, was in fact applicable only to The Netherlands. See Bynkershoek, *De Dominio Maris Dissertatio* (2d ed., 1744) 364 (Magoffin transl., Classics of International Law ed., 1923, 44). The Netherlands were a personal possession of Phillip II, inherited from his Habsburg ancestors. See 16 Encyclopedia Britannica (1958) 250–251. They did not belong to Spain, and they had separate laws. See also U. S. Br. 161–169.

C. THE UNITED STATES HAS NOT CLAIMED OR RECOGNIZED A BOUNDARY MORE THAN THREE MILES FROM THE COAST OF LOUISIANA

Louisiana cites various statements (La. Br. 48–52) to the effect that the United States might someday claim a boundary more than three miles from the coast.[26] However, as is pointed out above, *supra,* pp. 25–27, 35, the important fact is that as yet it has not done so.

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[26] Louisiana refers (La. Br. 47) to materials quoted in its former brief and Appendix, supposed to show American recognition of three-league boundaries in the Gulf of Mexico. Among them is a passage (Appendix to Brief on Behalf of the State of Louisiana [No. 11, Orig., Oct. Term, 1956], 75–76) from the Memoirs of John Quincy Adams, enumerating as one of the advantages of the Spanish-American Treaty of February 22, 1819, "*the recognized extension of the South Sea.*" (Italics supplied by Louisiana.) That is a misquotation; it should read "extension *to* the South Sea." 4 *Memoirs of John Quincy Adams* (1875) 290; 3 Miller, *Treaties and Other International Acts of the United States* (1933) 45. The reference is to the fact that the treaty traced the boundary

Louisiana also attacks our position that the national boundary of the United States is, and has been, established at the three-mile line. It refers (La. Br. 51) to the Act of February 18, 1793, as establishing jurisdiction over fishing vessels within three leagues of the coast (Sec. 21, 1 Stat. 305, 313–314). However, that provision was only a customs regulation applicable to vessels licensed for fishing; it was not a fishing regulation. Louisiana refers also (La. Br. 53) to President Jefferson's message of December 3, 1805, as showing an exercise of jurisdiction over the sea within the limits of the Gulf Stream. However, the message shows on its face that it related solely to suppression of piracy. That is something any nation may do anywhere on the high seas; it has nothing to do with territorial claims.

Louisiana relies (La. Br. 62) on the table appearing at page 35 of the Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., setting forth estimates of the areas of submerged lands within the several States, a footnote to which states that in computing the areas a three-mile limit was used except in the case of Texas, Louisiana, and the west coast of

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line all the way to the Pacific Ocean; it has nothing to do with the marginal sea.

Louisiana also refers (La. Br. 60; see also Jt. Br. 96) to President Jackson's message of December 22, 1836, as having "requested" congressional recognition of Texas, and as saying Texas' title to her territory was "identical" with her independence. Again, the reference is mistaken. The message explained why recognition should be delayed, and referred to Texas' title as "identified" with her independence. See U. S. Br. 201–202, and Tex. Br. 87.

Florida, where three leagues was used. That table was used merely to show the areas to be granted on the stated assumption as to limits; it did not at all mean that the assumption would be endorsed by the legislation. The history of the Act makes the contrary quite clear (U. S. Br. 51–58 and App. E, 389–402; *supra,* pp. 5–15, 20–21). However, the table is particularly unhelpful for Louisiana, because Senator Holland, who introduced the exhibit in the committee hearing, explained on the floor of the Senate that the footnote was mistaken in stating that a three-league boundary had been used for Louisiana, and that he believed the correct boundary of Louisiana to be three miles from the coast. 99 Cong. Rec. 2755.[27] This statement is entirely consistent with the data shown on the map which Senator Holland placed on the floor of the Senate and which was referred to throughout

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[27] Mr. HOLLAND. The sea boundaries of the State of Louisiana were stated in the enabling act as the Gulf of Mexico. They extend out 3 marine miles by operation of law and include specifically all islands lying within 3 leagues of the coast. * * * [Regarding the note to the table on page 35 of the hearings] the inclusion of Louisiana in that particular way was stated to be incorrect, and the Senator from Florida, in his testimony, stated in great detail exactly what he has stated on the floor of the Senate today with reference to his understanding as to what constitutes the boundaries of Louisiana. * * * It is 3 marine miles. That particular item is the only item in the table as to which the Senator from Florida discovered any discrepancy with the facts. I should like to make it quite clear that that discrepancy is not carried through in the statement of the areas included within Louisiana, according to my understanding.

the debates. This map is reproduced opposite page 35 of the Texas brief.[28]

D. THE MOTION FOR JUDGMENT DOES NOT ADMIT ANY FACTS SUPPORTING AN INTERPRETATION OF THE ACT OF ADMISSION AS FIXING A THREE-LEAGUE BOUNDARY

Louisiana argues (La. Br. 63–70) that the United States' motion for judgment admits facts properly pleaded by Louisiana and that the facts set forth in Louisiana's Fifth, Sixth, and Seventh defenses show that the United States and Louisiana both treated Louisiana's boundary as including the area in dispute. This, says Louisiana, constitutes an interpretation of the terms of its admission.

While there is considerable question as to how many of the allegations in the named defenses are facts properly pleaded, and therefore admitted for the purposes of the motion, even assuming that everything is admitted, still it would not help Louisiana's case. Although it is alleged that the various acts recognizing Louisiana's sovereignty and ownership occurred within the area described in the complaint, there is no indication whatever that these acts had any relationship to the asserted three-league boundary. It appears from the same allegations, which were made as defenses filed in 1949 in the original suit against

[28] The 26,608 square miles of submerged lands under the States' marginal seas, referred to in the "legend" on the map, when translated to acres, comes out at 17,029,120, exactly the figure appearing in the chart used in the Committee hearings, indicating that Senator Holland was right in his statement that that figure was in fact computed on the basis of a 3-mile limit for Louisiana.

Louisiana, that much of Louisiana's claim and the alleged acquiescence of the United States occurred in the three-mile belt. At any rate, none of the alleged activity has any reference to three leagues and therefore does not aid Louisiana in its present construction of its Act of Admission.

Moreover, the particular actions which Louisiana relies on were largely based on a mistaken view as to the extent of the State's title to the submerged lands; such actions were rejected in resolving the former controversy (*United States* v. *Louisiana*, 339 U. S. 699) and do not appear to be entitled to any greater weight in resolving the present one which turns on legal issues cognizable by the Court on the present motion.[29]

E. THE "COAST GUARD LINE" IS NOT MATERIAL TO THE PRESENT CASE

Louisiana Act 33 of 1954 defined the boundary of the State as a line lying 3 leagues seaward from the line designated by the Commandant of the Coast Guard as the outer limit of the waters in which vessels must follow the inland rules of navigation. La. Acts (1954) p. 63. Louisiana argues (La. Br. 81–89) that the Coast Guard Line properly constitutes the "coast" of Louisiana as defined by Section 2 (c) of the Submerged Lands Act.

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[29] At least twice in the years that preceded the present litigation Attorneys General of Louisiana have issued opinions to the effect that the southern boundary of Louisiana does not extend more than three miles into the Gulf of Mexico. *Reports and Opinions of the Attorney General of Louisiana*, April 1, 1934, to April 1, 1936, p. 685; April 1, 1936, to April 1, 1938, p. 959.

(a). We think the location of the coast is not material at this stage of the proceedings. The United States has only moved for a judgment fixing the width of the marginal belt at three miles. For purposes of such a judgment it is not necessary to identify specifically the location of the base line from which the belt is to be measured.[30]

(b). But, for a more fundamental reason, the Coast Guard line is immaterial so far as the issues of this case are concerned. It is not clear whether Louisiana relies on the Coast Guard line as having some operative effect to create new rights in the State, or merely as evidence of what has been the outer limit of the inland waters of the State ever since it entered the Union; but we submit that, viewed in either light, the line can give no support to Louisiana's claims.

(i) Clearly, the Coast Guard line is not an interpretation of the extent of Louisiana's existing inland waters. This was emphatically declared by the man best qualified to know, the Commandant of the Coast

[30] As a practical matter, the conduct of this litigation will be expedited by considering first the width of the belt only, without attempting at this stage to fix the base line. It is impossible to foretell what questions on the location of the base line will be important until the first step is taken, since along an irregular coast the determination of width may eliminate some of the questions on location. On a shelving and tortuous coast such as that of Louisiana, specific identification of the low-water mark and the outer limit of inland waters involves both difficult factual questions of physical observation at every disputed location and legal questions as to the definition of terms and the application of definitions to particular physical situations. The resolution of these problems with respect to the entire coast of Louisiana may well be a protracted process.

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Guard himself, at the time of promulgating the line. His order [31] establishing the line included the following (18 Fed. Reg. 7893):

> The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping. Section 2 of the act of February 19, 1895, as amended (33 U. S. C. 151), authorizes the establishment of these descriptive lines primarily to indicate where different statutory and regulatory rules for preventing collisions of vessels shall apply and must be followed by public and private vessels. These lines are not for the purpose of defining Federal or State boundaries, nor do they define or describe Federal or State jurisdiction over navigable waters. Upon the waters inshore of the lines described, the Inland Rules and Pilot Rules apply. Upon the waters outside of the lines described, the International Rules apply.

Even if the Commandant had misconstrued his authority, it is obvious that a line which he formulated without regard to jurisdictional boundaries can have no weight as an interpretation of those boundaries. However, we submit that he was correct in his belief that the statute under which he acted provided for nothing more than the establishment of navigational rules. That statute, the Act of February 19, 1895, 28 Stat. 672, was entitled,

> An Act To adopt special rules for the navigation of harbors, rivers and inland waters of

[31] The order was dated December 1, 1953, was filed December 7, 1953, was published December 8, 1953, and was to be effective as of January 1, 1954.

> the United States, except the Great Lakes and their connecting and tributary waters as far east as Montreal, supplementary to the Act of August nineteenth, eighteen hundred and ninety, entitled "An Act to adopt regulations for preventing collisions at sea."

Relevant provisions of the Act were:

> That on and after March first, eighteen hundred and ninety-five the provisions of sections forty-two hundred and thirty-three, forty-four hundred and twelve, and forty-four hundred and thirteen of the Revised Statutes and regulations pursuant thereto shall be followed on the harbors, rivers and inland waters of the United States.
>
> * * * * *
>
> SEC. 2. The Secretary of the Treasury is hereby authorized, empowered and directed from time to time to designate and define by suitable bearings or ranges with light houses, light vessels, buoys or coast objects, the lines dividing the high seas from rivers, harbors and inland waters.

Section 2, *supra,* is now codified as 33 U. S. C. 151. The authority which it conferred on the Secretary of the Treasury was successively transferred to the Secretary of Commerce and Labor (Act of February 14, 1903, Sec. 10, 32 Stat. 829), later redesignated "Secretary of Commerce" (Act of March 4, 1913, Sec. 1, 37 Stat. 736), transferred to the Commandant of the Coast Guard (Reorganization Plan No. 3 of 1946, Secs. 101–104, 60 Stat. 1097–1098), transferred to the Secretary of the Treasury, or to

the Secretary of the Navy when the Coast Guard is operating in that Department (Reorganization Plan No. 26 of 1950, 64 Stat. 1280), and delegated by the Secretary of the Treasury to the Commandant of the Coast Guard (Treasury Department Order of July 31, 1950, 15 Fed. Reg. 6521).

The Act of 1895 did nothing more than to provide for rules of navigation, and for delimiting the waters where the inland rules were to be followed, as distinguished from the international rules. It cannot be supposed that Congress intended to invest the Commandant of the Coast Guard with power to decide the boundaries of the United States or of the coastal States; he was concerned with navigational problems and would presumably be guided by considerations of navigation rather than jurisdiction—as his own statement, *supra,* shows that he has been.

The case of *The Delaware,* 161 U. S. 459, cited by Louisiana (La. Br. 82), is not to the contrary. It did not hold that the waters inside the Coast Guard Line at New York harbor were inland waters in the territorial sense; it said only that they were inland waters "within the meaning of this Act," *i. e.,* the Act requiring ships to observe the inland rules of navigation within that line. 161 U. S. at 463.

Furthermore, the character of the Coast Guard line as described in 33 C. F. R. 82.95 and 82.103 shows that the Commandant's order describing it constituted the establishment of an artificial line rather than the recognition of a natural one. Except for about 60 nautical miles of its length nearest the Mississippi

boundary, the line runs between navigational buoys and one lighthouse, situated distances of from 1½ to 10 nautical miles seaward from the nearest mainland or island, as shown on charts of the Coast and Geodetic Survey.[32] The line itself runs much more than 20 nautical miles from the nearest land at some places. Inland waters in the jurisdictional sense are those that are so landlocked as to be within the exclusive jurisdiction of the littoral nation. However one is to define "landlocked" waters (and we believe that question should be deferred to supplementary proceedings), they cannot include, as does the Coast Guard line, a belt of water extending far seaward of the outermost islands and points of land. Even the Anglo-Norwegian *Fisheries Case,* I. C. J. Reports (1951) 116, apparently marking the most extreme extent of base line for the marginal sea ever to be given international recognition, did not go beyond lines drawn between points of dry land, either on the mainland or islands or rocks in the sea.

The Act of February 10, 1807, 2 Stat. 413, cited by Louisiana (La. Br. 81), is wholly irrelevant. It merely authorized a survey of coastal waters for the purpose of preparing navigational charts.

(ii) It is equally clear that the Coast Guard line had no operative effect to enlarge Louisiana's boundary. The establishment of such a line, defining the area in which the inland rules of navigation are to

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[32] The Louisiana portion of the Coast Guard line is shown on U. S. C. & G. S. Charts 1267, 1270, 1272–1279. It also appears in somewhat more convenient form on the smaller scale charts 1115 and 1116.

be observed, does not work any change in State boundaries. *United States* v. *Newark Meadows Imp. Co.*, 173 Fed. 426, 428 (C. C. S. D. N. Y.) And, as we have already pointed out (*supra*, pp. 53–54), the Commandant of the Coast Guard, in establishing the line, declared that it was not intended to have any such effect.

(iii) Louisiana Act 33 of 1954, La. Acts, 1954, p. 63, asserting a boundary three leagues seaward from the Coast Guard line, cannot improve the State's position in this respect. For the reasons just discussed, the Coast Guard line is not a proper base line from which to measure the width of the marginal sea. Moreover, the statute came too late to entitle the State to benefits under the Submerged Lands Act. The grant made by that Act is limited to boundaries three miles from the coast, unless a more extended boundary existed when the State entered the Union, or was approved by Congress before May 22, 1953. Sec. 2 (b), 67 Stat. 29, 43 U. S. C. (1952 ed.) Supp. V, 1301 (b). The Coast Guard line was not adopted until December 1, 1953, to be effective January 1, 1954 (18 Fed. Reg. 7893); and Louisiana Act 33 of 1954 was not adopted until June 21, 1954, and has never been approved by Congress.

Moreover, Louisiana Act 33 of 1954 cannot be invoked as a mere interpretation of the State's boundary as it existed when the State entered the Union. The Act of April 8, 1812, 2 Stat. 701, admitting Louisiana to the Union, defined the State as "including all islands within three leagues of the coast."

First, Louisiana construes that as meaning "including *everything* within three leagues of the coast." Then, it says that this means the State has a three-league marginal belt. Then, it says that this means the State extends three leagues beyond the outer limit of inland waters. And finally, it says that this means the State extends three leagues beyond the Coast Guard line. The net result of this series of substitutions is that "including all islands within three leagues of the coast" is said to mean, "including three leagues of water beyond a line which itself runs, between the Mississippi and the Sabine, seven nautical miles or more seaward of all islands." We submit that "islands within three leagues of the coast" does *not* mean, "16 miles of water beyond the outermost islands."

III

THE SUBMERGED LANDS ACT GRANTS TO TEXAS NO RIGHTS BEYOND THE THREE-MILE LIMIT

A. BY THE SUBMERGED LANDS ACT, CONGRESS DID NOT ADOPT A THREE-LEAGUE BOUNDARY FOR TEXAS

1. *Congress left the issue of the extent of the grant to be determined as a matter of law depending on the location of the State's historic boundaries at the time it joined the Union*

In Point I, *supra,* pp. 5–25, we have replied in some detail to the arguments in the Texas Brief as well as the Joint Brief with respect to the intent of Congress and the proper construction of the provisions of the Submerged Lands Act. We have shown that Congress did not grant Texas title out to any specified

boundary, three leagues or otherwise, but did grant title out to its boundary at the time it became a State wherever that should be established as a matter of law.

2. *The Federal Government has not adopted a different construction of the Submerged Lands Act*

Texas points to certain things done, or not done, in the Interior Department, as showing an understanding that the United States did not retain submerged lands within three leagues of the coast of Texas (Tex. Br. 59–64). Several things may be said of this.

First, it appears that these actions did not reflect an interpretation of the meaning of the Submerged Lands Act, or of the Outer Continental Shelf Lands Act, under which lands retained by the Federal Government are administered by the Secretary of the Interior; they reflected only a belief as to where the boundary of Texas might be located. While the construction put on the Outer Continental Shelf Lands Act by the Secretary of the Interior is of course persuasive, he is not the official charged with responsibility for declaring the exterior limits of the United States. In that sphere, the position taken by the Secretary of State must prevail. This was recognized by Secretary of the Interior McKay in writing to the Chairman of the Senate Interior Committee on February 16, 1953, in answer to a request for maps showing the seaward boundaries of the coastal States. He pointed out that the maps showed three-league boundaries off the coasts of Texas and northern Florida, but added the caveat, "Of course, this Department

has no authority to determine the location of those boundary lines." Senate Interior Committee Hearings on S. J. Res. 13, 83d Cong., 1st Sess., 535.

Moreover, the position of the Interior Department has not been so definitive as Texas suggests. It has been simply that, until the dispute is resolved by adjudication, the Department will refrain from taking action affecting the area inside the three-league line claimed by Texas.[33] Thus, in a memorandum of May 4, 1955, regarding "split" leases (*i. e.,* leases partly on Federal and partly on State lands) off the coast of Louisiana, the Associate Solicitor for Public Lands wrote to the Solicitor of the Interior Department, "Obviously, in view of the present situation with respect to Texas we are not ready to make determinations on split leases off that State." Nor has the Department yet made such determinations. No applications affecting areas inside the three-league line have been ruled on; they would have been denied if the Department had actually adopted Texas' view.

Finally, we may repeat here what this Court said in *United States* v. *California,* 332 U. S. 19, 39–40:

> And even assuming that Government agencies have been negligent in failing to recognize or assert the claims of the Government at an earlier date, the great interests of the Government in this ocean area are not to be forfeited as a result. The Government, which holds its

[33] Since it appears that no minerals are being extracted between the three-mile line and the three-league line, the United States has not been threatened with the same sort of immediate injury in that area as it has been off the coast of Louisiana.

> interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.

Texas also refers to statements made in the House debates on the Outer Continental Shelf Lands Act as showing an undisputed belief that the Submerged Lands Act had made a three-league grant to Texas (Tex. Br. 67–70). Those references were only casual; the extent of the grant was no longer under consideration, as the House was then concerned with federal administration of all that remained, whatever it might be. Moreover, other statements showed a realization that the Texan claim was still unsettled. Congressman Wilson of Texas referred to it merely as "our theory—at least the Texas theory, and that is that our claim—and the only claim which we can really justify and which we think without doubt we have, our historical boundary of 10½ miles." 99 Cong. Rec. 4887. Similarly recognizing the still unsettled nature of the question, Congressman Feighan of Ohio said:

> There are in the Gulf of Mexico beyond the Continental Shelf outside of the historic or 3-mile boundary of Texas and Louisiana oil-producing wells * * *. [99 Cong. Rec. 4888.]

B. THE REPUBLIC OF TEXAS DID NOT HAVE A VALID OR EFFECTIVE THREE-LEAGUE BOUNDARY, AS AGAINST THE UNITED STATES

1. *Under international law as accepted and applied by the United States, the Republic of Texas could not have a valid three-league boundary*

Texas argues (Tex. Br. 113–123) that the Republic of Texas was free to adopt a three-league maritime limit because there was no universally accepted rule of international law restricting maritime limits more narrowly. This, however, approaches the question from the wrong direction. We are not concerned with Texas' right to claim three leagues, but with the right of the United States to refuse recognition to that claim. Nations are free to regard the seas as open to all, except to the extent that international law *requires* them to recognize territorial rights of other nations therein. There was and is no universally accepted rule of international law requiring a nation to recognize territorial boundaries more than three miles from the coast, and the United States has consistently refused to claim or recognize such boundaries. In courts of the United States, therefore, such claims must be rejected as invalid, and it is immaterial that some writers have considered such claims justifiable or that some countries have recognized them. It would be extraordinary if an American court should enforce the policy of foreign governments in preference to the consistent, established policy of our own. Nor will an American court choose as the proper rule of international law a position long rejected by this country.

In any event, there is no merit in the suggestion that the three-league claim of the Republic of Texas was established against the world by its mere assertion in a Texan statute. The cases which Texas cites (Tex. Br. 123) fall far short of sustaining such a proposition. The *Anglo-Iranian Oil Co. Case,* I. C. J. Reports, 1952, p. 92 at 107, involved construction of the Iranian Declaration accepting jurisdiction of the court. To resolve an ambiguity in the Declaration (a unilateral act), the court held it proper to consider the terms of the Iranian statute approving the Declaration, as showing the intent of the Iranian government. In *Lübeck* v. *Mecklenburg-Schwerin,* Annual Digest of Public International Law Cases, 1925–1926, No. 85, p. 114, Lübeck had actually exercised jurisdiction over a bay between the two states since the end of the sixteenth century, and had asserted its right to do so by statute since 1896. In those circumstances, it was obviously appropriate to look at the statute as defining the claimed rights actually exercised in a common boundary water; it by no means follows that a statute alone would be such notice of claims to coastal waters as to make it binding on nations that failed to protest within nine years (*i. e.,* the life of the Texan Republic).

Texas refers at some length (Tex. Br. 76–85) to the activities of the Texan Navy as establishing actual control over a three-league belt. However, an examination of the references quoted will show that the Navy was not at all confining itself to the three-league belt, but was operating throughout the Gulf of Mexico,

and as far afield as Cape Catoche in Yucatan (Tex. Br. 83). Obviously, these were war measures, not at all related to the territorial claims of Texas, and cannot be relied on as constituting effective notice or assertion of those claims.[34] The capture of the ships *Pocket* and *Durango,* relied on by Texas (Tex. Br. 81, fn. 118), has even less weight, since Texas ultimately paid the United States an indemnity because of it. Convention of April 11, 1838, 8 Stat. 510. Moreover, the *Durango* was seized in Matagorda Bay, where the territorial jurisdiction of Texas was unquestioned. 4 Miller, *Treaties and Other International Acts of the United States* (1934) 125–131. We are not informed as to where the *Pocket* was taken; consequently its seizure scarcely demonstrates any particular territorial jurisdiction.[35]

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[34] On a parity of reasoning it could be asserted that the United States established a territorial claim to the entire Atlantic and Pacific Oceans by sweeping them free of enemy submarines in World War II.

[35] There is reason to believe that the Texan navy had less control of the Gulf of Mexico than the State now suggests. On February 14, 1844, Anson Jones, Secretary of State of the Republic of Texas, wrote to the American Chargé d' Affaires, stating as a condition for entering into annexation negotiations that the United States should protect Texas from Mexican naval attack. He wrote:

"Were Texas to commence negotiations with the United States in relation to annexation, and they should from any cause be protracted, or ultimately result in failure, it would not only render our position in regard to Mexico peculiarly hazardous, but place us in a delicate attitude with *other Powers.* * * *

"If, therefore, General Murphy will, on the part of his Government, give assurances to this that the United States shall assume the attitude of a defensive ally of Texas against Mexico;

We have not contended, as Texas implies (Tex. Br. 126–127), that prescriptive rights can only be acquired against nations which acquiesce in them by affirmative acts as distinguished from passivity. What we have contended is that the assertion of the rights must be active, rather than merely a paper claim not brought home effectively to other nations, and must be continued for a very substantial period. We believe this contention is fully supported by our opening brief (U. S. Br. 188–195), and that the Texas claim fails to qualify under this recognized standard. Texas' attempt (Tex. Br. 129) to enlarge the nine-year life of the Republic of Texas' statutory claim by adding 110 years of subsequent American adherence to the Treaty of Guadalupe Hidalgo is unsound. The extent of Texas' boundary *at the time it entered the Union* cannot be enlarged by anything that happened thereafter. However, the United States has consistently maintained that the Treaty of Guadalupe Hidalgo does not recognize a belt of territorial waters wider than three miles. See U. S. Br. 65–66, 72–73, 84–89, and *supra,* pp. 37–41.

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that the United States will maintain a naval force in the Gulf of Mexico, subject to his orders, able successfully to oppose the marine of Mexico * * * [and provide certain land forces] the President will have no hesitation in forthwith despatching a minister with ample powers to the Government of the United States, to co-operate with our minister now there in negotiating for the annexation of Texas. * * *" (S. Doc. No. 349, 28th Cong., 1st Sess., 4; emphasis in original.)

2. *The Republic of Texas never insisted that the United States recognize its three-league claim*

In the course of diplomatic negotiations and correspondence between the United States and the Republic of Texas, the subject of Texas' boundaries sometimes arose and its boundary statute was sometimes referred to. However, it seems that these references always either were general or referred to particular inland boundary questions; we know of no instance where the maritime claim was involved or even mentioned except as it was incidentally included in the provisions of the statute. And it is evident that Texas at no time insisted on recognition of its boundary claim as a whole, or of its maritime claim in particular.

In his letter of instructions of November 18, 1836, to W. H. Wharton, the Texan Minister to the United States, Stephen F. Austin, the Texan Secretary of State, wrote regarding a hoped-for annexation treaty:

> As regards the boundaries of Texas, perhaps this question cannot be definitely settled at present; it may however be important for you to explain the views of this governmt. on this point. You will therefore use the following as you may deem necessary. We claim and consider that we have possession to the Rio Bravo del Norte. Taking this as the basis, the boundary of Texas would be as follows. Beginning at the mouth of said River on the Gulf of Mexico, thence up the middle thereof, following its main channel, including the Islands to its most northerly Source, thence in a direct line to the

United States boundary under the treaty of De Onis at the head of Arkansas river, thence down said river and following the United States line as fixed by said De Onis treaty to the Gulf of Mexico at the mouth of Sabine, thence Southwardly along the Shore of said Gulf to the place of beginning, including the adjacent islands, sounding, etc. * * *

* * * Should it appear that very serious embarrassments or delays will be produced by insisting on the above described line, the following alterations might be made on the Western boundary—instead of the Rio Bravo, beginning on the West of the Gulf of Mexico, half way between the mouth of the Bravo and the inlet of Corpus Christi, which is the main outlet of the Nueces River and bay into the Gulf, thence in a Northwestwardly direction following the dividing ridge * * *. The Bravo as a line would cut off many settlements and some villages of native Mexicans and divide the populous valley of New Mexico. It therefore may be seriously objected to. The other line along the dividing ridge * * * will include in Texas all the vallies of the Nueces and Puerco and all the waters of the Red River and those of the South Side of Arkansas, west of De Onis' line, all of which naturally belongs to Texas and we have peaceable possession of it. The Salt lakes or ponds between the Nueces and Rio Bravo are of incalculable value and would supply a great amount of this article in the christalized form—the last mentioned line would divide them, the first would include them all. [1 Gar-

rison, *Diplomatic Correspondence of the Republic of Texas* (1908) 127, 132–133.][36]

He did point out, however, in a separate letter of private instructions of the same date, that Texas would insist that its eastern boundary as established by the Spanish treaty of 1819 was at the Sabine and not at the Neches as the United States was contending. *Ibid.* 135, 138.[37]

Since there was no annexation treaty at that time, the boundary question was not pursued. The subject arose again in 1838, when a dispute developed between the United States and Texas over the location of the boundary as it ran from the Sabine to the Red River, and Texas attempted to extend its jurisdiction over Miller and Sevier Counties in Arkansas. See 1 Garrison, *Diplomatic Correspondence of the Republic of Texas* (1908) 277–320: 12 Manning, *Diplomatic Correspondence of the United States; Inter-American Affairs, 1831–1860* (1939) 7, 148–170, 182. This led to the boundary convention of April 25, 1938, between the United States and Texas, reaffirming the boundary established by the previous Spanish and Mexican treaties and providing for a joint survey from the mouth of the Sabine to the Red River. In connection with the negotiation of that convention, the Texan Secretary of State, R. A. Irion, wrote to Memucan Hunt,

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[36] The first volume of the *Diplomatic Correspondence of the Republic of Texas* was printed as H. Doc. No. 1282, 60th Cong., 2d Sess. (Ser. No. 5537). The second and third volumes were printed as H. Doc. No. 137, 61st Cong., 2d Sess. (Ser. No. 5828).

[37] This position was repeated in a letter of January 31, 1838, from Memucan Hunt, Texan Minister to the United States, to R. A. Irion, Texan Secretary of State. *Ibid.* 284, 287.

the Texan Minister to the United States,[38] on March 21, 1838, repeating the Texan claim to the disputed land between the Sabine and Red rivers, describing the Texan boundaries as in the Texan Act of December 19, 1836, and explaining that Texas did not desire the survey to run beyond the Red River because of the difficulty of coping with hostile Indians. 1 Garrison, *Diplomatic Correspondence of the Republic of Texas* (1908) 318–320. There is nothing to indicate that those instructions were brought to the attention of representatives of the United States. Like the Texan statute of December 19, 1836, they described the boundary between Texas and the United States only by reference to the Spanish treaty of 1819, which both parties agreed was controlling (see 4 Miller, *Treaties and Other International Acts of the United States* (1934) 135–136), and the new boundary convention did the same, without any reference to any extension of the boundary into the Gulf of Mexico.

It is true that on February 25, 1844, Anson Jones, Texan Secretary of State, instructed J. Pinckney Henderson and Isaac Van Zandt, Texan representa-

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[38] Texas describes General Hunt as the Texan "Commissioner" (Tex. Br. 91). He held the post of Minister to the United States until June 12, 1838. 1 Garrison, *Diplomatic Correspondence of the Republic of Texas* (1908) 23. It was not until January 20, 1840, that he replaced David Sample as Texan member of the Boundary Commission established by the convention. S. Doc. No. 199, 27th Cong., 2d Sess., p. 58. Secretary Irion's letter of instruction to him on March 21, 1838, *supra*, referred to the terms he was to seek in negotiating the boundary convention, not to the action he was to take as commissioner under it.

tives negotiating the unratified annexation treaty of April 12, 1844, that in specifying Texas' boundaries they should be governed by the act of its legislature on the subject. 2 Garrison, *Diplomatic Correspondence of the Republic of Texas* (1911) 259, 260. However, a month later, on March 26, 1844, he authorized them to use their own discretion in departing, if necessary, from any instructions given them regarding treaty terms. *Ibid.*, 265, 266. The treaty as signed merely said that Texas "cedes to the United States all its territories". Art. I; S. Doc. No. 341, 28th Cong., 1st Sess., p. 10. Representatives of both countries explained this as leaving boundaries to be settled by negotiation by the United States. Letter of April 12, 1844, from Isaac Van Zandt and J. Pinckney Henderson, Texan representatives, to Anson Jones, Texan Secretary of State, 2 Garrison, *Diplomatic Correspondence of the Republic of Texas* (1911) 269, 270; letter of April 19, 1844, from John C. Calhoun, Secretary of State, to the American Chargé d'Affaires in Mexico, S. Doc. No. 341, 28th Cong., 1st Sess., pp. 53–54, U. S. Br. 204; letter of September 27, 1844, from Duff Green, Confidential Agent of the United States, to Secretary of State Calhoun, 12 Manning, *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860* (1939) 368.

After rejection of that treaty by the United States Senate, Texas prescribed to Mexico certain preliminary conditions to treaty negotiations with her. The third of those conditions was, "Limits and other subjects of mutual interest to be settled by negotiation."

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Letter of June 11, 1845, from Andrew J. Donelson, American Chargé d'Affaires in Texas, to James Buchanan, Secretary of State, 12 Manning, *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860* (1939) 426. Mexico agreed to those conditions (*ibid.*), but the matter was not pursued because of the Texan acceptance of annexation to the United States.

Texas asserts (Tex. Br. 98) that the United States relied heavily on Sam Houston's support for the annexation, having induced it by a promise that Texan boundary claims would be maintained. However, it appears that he clearly understood that they were not guaranteed, and for that reason was reluctant to accept the annexation. On April 12, 1845, Andrew Donelson, American Chargé d'Affaires in Texas, wrote to Secretary of State Buchanan describing a meeting with ex-President Houston. 12 Manning, *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860* (1939) 400–402. He said, in part:

> He * * * insisted that Texas never could come into the Union without a recognition of her claim as far west as the Rio Grande.[39] To his objections on these points I stated at large the general policy of the United States as justify-

[39] While President, Houston had explained his insistence on that boundary by reference to the value of the salt beds between the Rio Grande and the Nueces. Letter of February 19, 1844, from William S. Murphy, American Chargé d'Affaires in Texas, to Abel P. Upshur, Secretary of State of the United States, 12 Manning, *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860* (1939) 331, 332. Cf. *supra*, p. 68.

ing no doubt of the tenacity with which they would maintain not only the present claim of Texas, but reenforce it with the preexisting one derived from France in 1803: and that in every contingency Texas would be as well off, in this respect, in the Union, as she could possibly be, out of it, for it was not to be expected that Mexico would yield further to her than she would to the United States.

I brought also to his view the fact that this latter feature of the proposals did not interfere with the right of Texas to define her limits as she claimed them, in her statutes—that the specification of the Rio Grande as the western boundary would be proper enough as shewing the extent to which the United States would maintain her claim as far as it could be done without manifest injustice to Mexico, and to the portion of the inhabitants of Mexico that had never yet acknowledged the jurisdiction of Texas—that practically the United States would take the place of Texas, and would be obligated to do all, in this respect, that Texas could do, were she to remain a separate nation. I compared the situation of Texas when in the union with that of Maine and the North Eastern boundary—the latter case illustrating the general duty of the United States to protect the Boundaries of the States but not without a just regard to the opposing claims or rights of other nations—the only difference in the case of Texas and that of Maine consisting in a stipulation beforehand with the former that no pecuniary responsibility would be acknowledged in case the claim to the Rio Grande from its mouth, in

> the sea, to its most westerly source, should prove not to be tenable.
>
> * * * * * * * * I left him under a full conviction that if the adoption of our proposals depended upon his vote, it would be lost.

Thus, it appears that Texas' references to its boundaries, in its various dealings with the United States, never related to the maritime boundary; that Texas did not insist that its boundary claim as a whole or its maritime claim in particular must be maintained by the United States; and that it was not understood that they would necessarily be so maintained under the terms of the annexation.

3. *The United States did not recognize the three-league boundary claimed by the Republic of Texas*

Texas argues that the United States by various actions recognized the three-league claim of the Republic of Texas. These contentions have been answered in our opening brief, pages 197–233, but the following comments may be added:

Texas says that President Jackson's message of December 1836, must have made reference to the Texan boundaries as claimed by the Texan Act of December 19, 1836 (Tex. Br. 87–89), and mentions the fact that the message was accompanied by ten reports regarding Texas. The only mention of Texan boundaries in those reports is in the report dated August 27, 1836, and is as follows:

> The boundaries claimed by Texas, since the repudiation of the treaty with Santa Anna, will

> extend from the mouth of Rio Grande on the east side, up to its head waters; thence on a line due north until it intersects that of the United States, and with that line to the Red river, or the northern boundary of the United States; thence to the Sabine, and along that river to its mouth; and from that point westwardly *with the Gulf of Mexico to the Rio Grande.*
>
> * * * * *
>
> The boundaries, as I have first described them, seem to be those which will be insisted upon in any future negotiation.
>
> The political limits of Texas proper, previous to the last revolution, were, the Nueces river on the west; along the Red river on the north; the Sabine on the east; and *the Gulf of Mexico* on the south. [H. Exec. Doc. No. 35, 24th Cong., 2d Sess., 11, 12; emphasis added.]

There was no indication that Texas had claimed or would claim a boundary three leagues in the Gulf. If President Jackson at all intended, as we think he did not (U. S. Br. 201–202), to refer to any particular Texan boundary claim, it presumably was the claim described in the documents accompanying his message.

Texas emphasizes (Tex. Br. 93–94) that the boundary convention of April 25, 1838, 8 Stat. 511, provided for a survey of only part of the boundary, which of course is true, as stated in our opening brief, pages 185, 203. However, the commissioners did not describe the monument which they put on the shore as marking the beginning point of the *survey;* they designated it as the point of beginning of the *boundary* between the two republics. See U. S. Br. 185–186, 203.

Nothing in the proceedings for the annexation of Texas, either under the unsuccessful treaty of 1844 or the joint resolution of 1845, shows recognition by the United States of the Texan boundary claim. See U. S. Br. 203–234. Texas cites (Tex. Br. 95) Senator Benton's objection to the 1844 treaty on the ground that it would commit the United States to the boundaries claimed by the Texan statute; but to this Senator Walker replied at length showing that it would not (U. S. Br. 210–212). Texas quotes (Tex. Br. 96) Senator Breese's expression of his opinion that the United States had recognized Texas' boundaries, but omits what he said immediately before and after, to the effect that the treaty would be effective only so far as the Texan claim was in fact a valid one:

> But it is objected, Mr. President, by the senator from Missouri [Mr. Benton,] that the treaty proposes to cede to us a portion of territory never belonging to Texas, but now, and always, in the undisputed possession of Mexico. I consider all these objections as futile. If Texas has no claim to the left bank of the Rio del Norte, we get no right by the cession. The cession for all she does possess, is good. If I convey five hundred acres of land, and have title to but one hundred acres of it, is not my conveyance valid for the one hundred? What shall be the true boundaries of Texas is left by the treaty as an open question, as all such matters usually are. When we acquired Louisiana in 1803, the boundaries were not defined; and it was not until 1819 they were established west to the Sabine. The limits of Texas are to be adjusted hereafter. * * * [Here follows

> the portion quoted by Texas.] * * * But this is a small matter, and can be readily adjusted with Mexico, should we encroach upon her rights. [Cong. Globe, 28th Cong., 1st Sess., App., 540.]

Congressman Bowlin's remarks, to which Texas refers (Tex. Br. 96), were part of a discussion designed to show that Texas' independence permitted us to receive her territory from her without affront to Mexico; it did not refer to any particular boundary claims. Cong. Globe, 28th Cong., 2d Sess., App., 94. Congressman Haralson's expression of his personal opinion that the Texan claim was correct (Tex. Br. 96) was only incidental to his explanation that the United States would not be committed to it because the treaty would permit the United States to adjust boundaries (U. S. Br. 215–216).

Texas argues that President Polk's letter of June 15, 1845, to Andrew J. Donelson, the American Chargé d'Affaires, contained a promise to maintain the boundaries claimed by Texas, and was relied on as such by Texas in agreeing to annexation (Tex. Br. 97–98). We have already pointed out that the purport of the letter was quite different, and that in any event it could not have been relied on by Texas as an inducement to accept annexation, because annexation was approved by the Texan Congress before Donelson received the letter and by the Texan convention before he had any opportunity to communicate its contents (U. S. Br. 229–233). Texas now replies (Tex. Br. 97–98) that the convention did not approve annexation until August 27, 1845, long after Donelson could

have told it of the letter. This is a misapprehension of the historical facts. Annexation was approved by the Texan congress on June 23, 1845 (Laws Rep. Tex., 9th Cong., Ex. Sess., p. 4; 3 Vernon's Tex. Const. Anno. (1955) 540) and by the Texan convention on July 4, 1845 (3 Vernon's Tex. Const. Anno. (1955) 541; 2 Gammel, Laws of Texas, 1228; House Judiciary Committee, Subcommittee No. 1, Hearings on H. R. 2948, 83d Cong., 1st Sess., 313). The ordinance of the convention was afterward attached to and made a part of the Constitution of the State of Texas, adopted on August 27, 1845. The citation which Texas gives (Tex. Br. 98, fn. 144), "2 Laws, Republic of Texas, 1303," is evidently to 2 Gammel's Laws of Texas 1303, where the ordinance of the convention is printed as part of the constitution; the date, August 27, 1845, refers to adoption of the constitution and not adoption of the ordinance. The fact remains, as stated in our opening brief (U. S. Br. 229–233), that the convention approved annexation before Donelson was able to reach it after receiving the Polk letter.[40]

[40] Texas contends (Tex. Br. 140–143) that, even if its three-league claim was invalid so far as territorial waters were concerned, the claim of the Republic of Texas was valid as to the submerged lands and resources and established a boundary for that purpose which must be considered the boundary referred to by the Submerged Lands Act. Assuming that such a claim would have had international validity in 1836, it is not the sort of claim that the Republic of Texas made, and it is not the sort of claim that Congress referred to. See *supra*, pp. 22–25. The fact that Texas might have made such a claim, and that if it had done so, Congress might have adopted it as the measure of its grant, has nothing to do with the meaning of the law (the Submerged Lands Act) actually under consideration here.

C. THE UNITED STATES HAS NOT APPROVED OR ADOPTED A BOUNDARY THREE LEAGUES FROM THE COAST OF THE STATE OF TEXAS

The argument presented by Texas (Tex. Br. 95–111) stresses two points: first, in admitting Texas as a State the United States accepted the 1836 boundary statute of the Republic of Texas fixing the boundary at three leagues from land; and, second, that the subsequent treaties with Mexico recognized that boundary.

We have already pointed out (U. S. Br. 208–240) that the Joint Resolution of March 1, 1845 (5 Stat. 797) for the annexation of Texas consented only to receiving "territory properly included within, and rightfully belonging to the Republic of Texas" subject to the qualification, "Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments * * *." We have also pointed out that the 1845 Constitution of the State of Texas adopted only those laws "not repugnant to the constitution of the United States * * *." Art. XIII, Section 3. Moreover, the Joint Resolution approving admission (9 Stat. 108) did not in terms or effect approve the Texas Constitution, but only made the finding that it complied with the requirement that the people "adopt a constitution, and erect a new State with a republican form of government."[41] Moreover, we have pointed out in our main brief that the debates

[41] The incongruity of contending that Congress approved everything referred to in the State constitution is well illustrated by Article XI of the post-Civil War Georgia Constitution, which adopted as the law in force in Georgia, among other things:

"III. * * * all acts passed by any legislative body, sitting in this State as such, since the 19th day of January, 1861 * * *

in Congress made it clear that there was no intention to undertake a defense of all of the territory theretofore claimed by the Republic. We see nothing in the Texas brief which impairs the soundness of these arguments.

As to the alleged confirmation of the three-league boundary by the Treaty of Guadalupe Hidalgo, the Gadsden Purchase, and the numerous subsequent boundary conventions, we have analyzed these assertions above, *supra,* pp. 37–40, in connection with the argument that the United States has adopted a three-league boundary for the Gulf. Our conclusion is that neither the United States nor Mexico intended to establish a three-league maritime boundary.

IV

THE SUBMERGED LANDS ACT GRANTS MISSISSIPPI NO RIGHTS BEYOND THE THREE-MILE LIMIT

Mississippi claims that its boundary is six leagues from the shore of the mainland, and that the Sub-

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and also so much of the common and statute laws of England, and of the statute laws of Georgia, as were in force in this State on the 19th day of December, 1860 [with certain exceptions] * * *.

"IV. Local and private acts passed for the benefit of counties, cities, towns, corporations, and private persons, not inconsistent with the supreme law, nor with this constitution, and which have not expired nor been repealed, shall have the force of statute law, subject to judicial decision as to their validity when passed * * *." (S. Exec. Doc. No. 57, 49th Cong., 2d Sess., 16–17.)

Texas' argument would lead to the conclusion that, in readmitting Georgia's senators and representatives, Congress "approved" all the existing laws, public and private, of Georgia and much of the statute and common law of England. Manifestly, Congress had no such intention.

merged Lands Act granted it all the submerged land within that limit which is within three leagues of the coast, *i. e.*, within three leagues of the outer limit of the inland waters of Mississippi Sound or within three leagues of the low-water mark on the gulfward shores of the islands that enclose the sound. The basis for Mississippi's claim is that the British province of West Florida, which formerly included the coastal portion of Mississippi and Alabama, was described as "including all islands within six leagues of the coast" and that the Mississippi Enabling Act described the State as "including all islands within six leagues of the shore." Miss. Br. 6, 12. We have already explained our reasons for believing that such language does not include any water or submerged land areas seaward of all islands (U. S. Br. 172–177, 253–254). Since all the Mississippi islands lie within or at the outer limit of inland waters, there is no necessity to consider whether such language would include water or submerged lands landward of islands if such areas were not within the limits of inland waters. U. S. Br. 177, 254.

Mississippi's contention (Miss. Br. 21) that the "three-league" provision of the Submerged Lands Act will be rendered meaningless if the States are not understood to have received the submerged lands to that distance, has already been discussed, *supra*, pp. 5–15.

V

THE SUBMERGED LANDS ACT GRANTS ALABAMA NO RIGHTS BEYOND THE THREE-MILE LIMIT

Alabama's claim to a marginal belt more than three miles wide rests on its construction of the phrase, "including all islands within six leagues of the shore," in descriptions of the State in the Alabama Enabling Act and elsewhere. Ala. Br. 9–13. The contention is that this description calls for a boundary running at a uniform distance of six leagues from the shore, regardless of the presence or absence of islands. As Alabama puts it, "To include all the territory and the islands within six leagues of shore, the line must of necessity go six leagues out from shore to do so." Ala. Br. 10. The fault in that reasoning lies in its assumption that all *territory* within six leagues of the shore is to be included; that is the exact question in issue. A provision that the State is to include all islands within a certain distance does not necessarily mean that it is to include the intervening water and submerged land, and certainly does not mean that it is to include water and submerged land to that distance where there are no islands or where the islands are closer to the shore.

To support its construction, Alabama quotes from 81 Corpus Juris Secundum 918, States § 18, "Where a state line is described to run so as to include all of the islands in a body of water * * * the line is to be a continuous line inclosing all of the specified islands without traversing lands or waters not included in the territorial limits of the state." Ala. Br. 10. That

passage refers only to drawing a line around actual islands; it does not at all sanction a line at a fixed distance from shore without regard to the presence or location of islands. Since the United States agrees that Alabama has a continuous boundary extending from the shore around all its islands (U. S. Br. 261), the quotation supports, rather than refutes, the Government's position, so far as Alabama's case is concerned. The quotation is supported by a single authority, *Mahler* v. *Norwich and New York Transportation Company,* 35 N. Y. 352. 81 C. J. S. 918, fns. 28–30. That case construed the boundary of the State of New York, described as running from Sandy Hook "to the place of beginning [*i. e.,* the Connecticut boundary on the north shore of Long Island Sound] in such manner as to include" Long Island and other named islands "and all the islands and waters in the bay of New York, and within the bounds above described." N. Y. Rev. Stats. (1829) 61–65. All the islands there enumerated either lie in New York Bay or Long Island Sound or form part of the screen separating the inland waters of the Sound from the high seas of the Atlantic Ocean.[42] The particular

[42] The enumerated islands were "Staten Island, and the islands of meadow on the west side thereof, Shooter's Island, Long Island, the Isle of Wight, now called Gardiner's Island, Fisher's Island, Shelter Island, Plumb Island, Robin's Island, Ram Island, the Gull Islands". N. Y. Rev. Stats. (1829) 65. Staten Island is of course in New York Bay; Shooter's Island is just north of it in the mouth of Newark Bay. *Webster's Geographical Dictionary* (1949) 1081, 1038. Gardiner's Island and Shelter Island are in Gardiner's Bay (*ibid.*, 387, 1034), which opens into Long Island Sound on the north-east shore of

location at issue in the case was about a mile off Sands' Point, in the western end of Long Island Sound, and the court held it to be within the State under the description quoted above. It emphasized that any other construction "would be an abandonment, by a maritime power, of jurisdiction over an inland body of water, inclosed within the State at each of its termini, and with no outlet to the ocean except under the command of our cannon from either shore." 35 N. Y. at 354. The court said (35 N. Y. at 355–356):

> The rule is one of universal recognition, that a bay, strait, sound or arm of the sea, lying wholly within the domain of a sovereign, and admitting no ingress from the ocean, except by a channel between contiguous headlands which he can command with his cannon on either side, is the subject of territorial dominion. * * * Within this rule, the islands at the eastern extremity of Long Island Sound are the *fauces terrae,* which define the limits of

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Long Island. Fisher's Island lies between the north-east shore of Long Island and the south shore of Connecticut. *Ibid.*, 360. Plumb Island, now called Plum Island, is at the east end of Long Island Sound, north of the entrance to Gardiner's Bay. 2 *McCulloch's Universal Gazetteer* (Haskel ed. 1844) 612; *Columbia Lippincott Gazetteer of the World* (1952) 1486. Robin's Island is between Great and Little Peconic Bays, Long Island. *Columbia Lippincott Gazetteer of the World* (1952) 1590. Ram Island, now called Cartwright Island, is immediately south of Gardiner's Island, in Gardiner's Bay. *Sixth Report of the United States Geographic Board, 1890 to 1932* (G. P. O. 1933) 198. Gull Islands are in the east entrance of Long Island Sound. *Columbia Lippincott Gazetteer of the World* (1952) 737.

> territorial authority, and mark the line of separation between the open ocean and the inland sea.

On the facts, the court found it unnecessary to fix the boundary between New York and Connecticut, in the eastern part of the Sound. 35 N. Y. at 355. The case thus depends on the inland status of the waters involved, and is in exact accord with the position of the United States, that a boundary will extend out from the shore to embrace those islands which are so situated as to enclose inland waters. It establishes nothing more.

Finally, we may note that in *Alabama* v. *Texas,* October Term, 1953, 347 U. S. 272, Alabama sought leave to file a complaint predicated on the proposition that the boundaries of Alabama and all other States are limited to the extent of three miles fixed by the Federal Government. Complaint, paragraphs XI, XIV, XVII, XXXIV (B), pages 7, 9, 11, 24. In its brief in support of its motion for leave to file that complaint, Alabama there said (p. 65):

> By joining the Union, Alabama became bound by the actions of the United States in the conduct of its foreign relations, and as a result, became bound by the rule, supported by the United States, that three nautical miles were the maximum limit of the width of the maritime belt which any nation, including the United States, might claim as part of its territorial boundaries. As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in width.

We agree with that particular position taken by Alabama in that case, although the then defendants (including the federal defendants) successfully opposed, on other grounds, Alabama's application for leave to file its complaint.

VI

THE SUBMERGED LANDS ACT GRANTS FLORIDA NO RIGHTS BEYOND THE THREE-MILE LIMIT

A. FLORIDA DID NOT HAVE A BOUNDARY BEYOND THE THREE-MILE LIMIT WHEN IT BECAME A MEMBER OF THE UNION

Florida advances two grounds for its contention that it had a maritime boundary beyond the three-mile limit when it became a member of the Union. The first (Fla. Br. 64–69) is that the British proclamation of October 7, 1763, described the provinces of East and West Florida as including all islands within six leagues of the coast, and that subsequent designations of Florida by name in the British transfer to Spain, the Spanish transfer to the United States, and the Florida Organic Act and Act of Admission are to be understood as adopting that description. This contention is fully answered by our opening brief, pages 313–316, and requires no further discussion here.

Florida's second ground (Fla. Br. 69–75) for claiming a boundary beyond the three-mile limit when it entered the Union is its assertion that Spain claimed greater territorial limits when it possessed Florida, and that the United States succeeded to and retained those Spanish pretensions and described the State of Florida in such a way as to give it the benefit of them, by reference. We cannot agree that Spain claimed

territorial limits of more than three miles when it possessed Florida. The State cites (Fla. Br. 69–70) various Spanish treaties prior to the 1819 cession of Florida to the United States, which set various distances for various purposes and between various parties: no fishing within three leagues of British coasts in the Gulf of St. Lawrence; no French vessels under 100 tons burden to carry contraband within two leagues of landing places on the coast; Ottoman vessels to be protected within sight of the coast; Tripolitanian vessels to make no captures within ten leagues of Spanish coasts; Spanish vessels to be protected within cannon shot of Algerian fortresses; British vessels not to navigate or fish within ten leagues of coasts already occupied by Spain.[43] The limited nature of these provisions and the diversity of distances used make it clear that they referred to special situations and did not reflect a general claim of territorial jurisdiction (in fact, the ones relating to the Gulf of St. Lawrence and to Algerian fortresses did not even concern Spanish coasts).

Much more significant, in our view, was the Royal Cédula of June 14, 1797, which provided:

> Art. I. The immunity of the coasts of all my dominions will not be measured as was done until now by the doubtful and uncertain range of cannon, but by the distance of two miles of 950 toesas each. [2 Riquelme, *Elementos de Derecho Público Internacional* (Madrid, 1849)

[43] This treaty was limited to the South Seas and Pacific Ocean. See U. S. Br. 161–165.

252; Book 6, Title 8, Law 5, *Novísima Recopilacion.*] [44]

A toesa, according to the Real Academia, *Diccionario de la Lengua Española,* was 1.946 meters; thus 950 toesas equaled 1,848.7 meters, or 4.548 meters less than the United States nautical mile of 1,853.248 meters. About two years later this distance was repeated in Article 21 of the Treaty of March 1, 1799, with Morocco, setting the limit for neutrality at cannon range or two miles. Cantillo, *Tratados, Convenios y Declaraciones de Paz y de Comercio* (Madrid, 1843) 689.[45] Again two years later, by ordinance of June 20, 1801, it was provided that prizes should not be taken within cannon range of neutral or allied coasts, whether or not there were actual batteries at the point of capture. 2 Riquelme, *Elementos de Derecho Público Internacional* (Madrid, 1849) 244; Crocker, *The Extent of the Marginal Sea* (1919) 624. It thus appears that the only Spanish rule of general application, up to the time of the cession of Florida to the United States in 1819, was the cédula of 1797 establishing a neutrality limit of two miles on all Spanish coasts.[46] We doubt that any of these provisions re-

[44] Art. I. La inmunidad de las costas de todos mis dominios no ha de ser marcada como hasta aquí por el dudoso é incierto alcance del cañon, sino por la distancia de dos millas de novecientas cincuenta toesas cada una."

[45] Erroneously given as two *leagues* in Crocker, *The Extent of the Marginal Sea* (1919) 624.

[46] Limits of three miles were afterward set by royal orders of March 31, 1828 (customs) (13 *Decretos de Fernando VII* 58) and November 23, 1914 (neutrality) (108 *British and Foreign State Papers* 589) while six-mile customs limits were

flected a territorial claim in the modern sense (*United States* v. *California,* 332 U. S. 19, 32–33), but, if any did, it would have been this general neutrality regulation. In any event, we think it clear that Spain had not asserted general territorial jurisdiction beyond the three-mile limit prior to its cession of Florida to the United States in 1819. Even if Spain had made such an assertion, it would not have been recognized or adopted by the United States at that time, as we had limited our jurisdiction to three miles as early as 1793, and never extended it; soon thereafter we adopted the policy of recognizing no greater limits for other nations. See U. S. Br. 59–106, and *supra,* pp. 25–43.

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asserted by decree of May 3, 1830 (15 *Decretos de Fernando VII* 145), decree of June 20, 1852 (56 *Colección Legislativa* 194; Crocker, *The Extent of the Marginal Sea* (1919) 624–625) and Article 42 of the general customs ordinances of July, 1870 (see *Foreign Relations of the United States*, 1881, p. 1054). However, Nazario de Puzo, of the Spanish Ministry of Marine in his *Tratado de Derecho Marítimo Español* (1887), page 20, still cites the cédula of 1797 as authority for the statement that Spanish jurisdictional waters extend two miles from shore. Other official Spanish writers refer to three miles as the maximum permissible limit of territorial waters, distinguishing the greater limits allowed for the limited purposes of customs enforcement. Menéndez-Pidal (of the Ministry of Marine), *Manual de Derecho Internacional Marítimo* (1923), 30:

"Article 1 of the Law on Ports of 1880 says that the littoral sea, to the width determined by international law, pertains to the public domain and is of public use, in the sense that in it there is freedom of navigation, fishing, embarking, debarking, anchoring, etc., subject to special police regulations and excepting the rights of persons inscribed on the maritime list regarding maritime industries, in which provision the Marqués de Olivart sees a sanctioning of the general rule of 3 miles, in

B. CONGRESS HAS NOT APPROVED FLORIDA'S CLAIM OF A THREE-LEAGUE BOUNDARY IN THE GULF OF MEXICO

Florida's case rests principally on the contention (Fla. Br. 14–64) that its claim to a boundary three leagues from land in the Gulf of Mexico was approved by Congress by the Act of June 25, 1868, 15 Stat. 73. In general, that contention has been answered by our opening brief, pages 261–317, but some of Florida's arguments call for further discussion.

It is undoubtedly true, as Florida says (Fla. Br. 33, 62–63), that the reference in the Submerged Lands Act to boundaries previously approved by Congress was made with Florida's claim in mind; but we think

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spite of the fact that a zone of six miles for fiscal purposes was determined by the Royal cédula of December 17, 1760, confirmed in 1775, by Royal decree of May 3, 1830 and by other provisions * * *."

The distinction between fiscal and military limits was also made by Gutiérrez del Alamo y García (also of the Ministry of Marine), *Texto de Derecho Marítimo Internacional* (officially approved by the Ministry, March 31, 1931) 20.

Derecho Internacional Marítimo (1941), an official handbook for officers on international maritime law, states (paragraph 11, p. 11) that each state may fix its territorial limits until an international interest is affected, when no more than three miles is recognized and national demarcations lose their value; and (paragraph 143, p. 77) that the general rule regarding neutrality does not admit a greater limit for territorial seas than three miles.

S. Whittemore Boggs, in an article entitled "National Claims in Adjacent Seas, 41 *Geographical Review* (No. 2, 1951) 185, 193, lists Spain as claiming six miles "For fiscal (customs, police) purposes." He adds in a note (*ibid.*, 199), "Reported to be found consistently in Spanish legislation since Royal Decree of May 3, 1830. For purposes of neutrality Spain has customarily indicated 3 mi."

it is equally clear that it did not show a congressional determination that that claim had been approved. It merely permitted the question to be submitted for adjudication. While the validity of the claim was frequently asserted, particularly by Senator Holland of Florida (see Fla. Br. 25–28), it was also sharply challenged. Thus, Senator Douglas of Illinois said (99 Cong. Rec. 2916–2917):

> There are also further legal questions that must be answered before the final effect of Senate Joint Resolution 13 in the matter of the 3 leagues can be determined. For instance * * * did the act of June 25, 1868, of the Congress of the United States which only acknowledged that Florida—and five other Southern States—"have framed constitutions of State government which are Republican," in legal effect "approve"—within the meaning of the joint resolution—the specific boundary claims of Florida in its 1868 constitution? * * *
>
> * * * * *
>
> I hope my good friend from Florida will not take offense when I say that, if congressional approval is claimed for an outer boundary on such a flimsy base as the act of June 25, 1868, in the case of Florida, must we not search all coastal States' and congressional records with great care for similar actions to learn the actual full effects of the grants in this bill? * * *

Senator Holland himself made it very clear that he was expressing only a personal opinion, and that the Act would give Florida rights only within such boundaries as she could establish in court:

> If under this resolution Florida and Texas receive property values out to the 3-league limit in the Gulf of Mexico, as I believe they should and will receive them, it will be because they can establish as a fact that Congress approved their 3-league outer boundaries as long ago as 1845 in the case of Texas and 1868 in the case of Florida. [99 Cong. Rec. 2746.]
>
> * * * * *
>
> So it is very difficult for me to understand why those who oppose the pending joint resolution feel that there is something to fear, if they feel we have no firm case for that boundary. We do not spell out that firm case in the pending measure. In this measure we simply claim the right not be [to?] be deprived of our right before the court and our rights whatever they are in the family of other States to show—if it be a fact—that we have a greater border than 3 miles, as we claim, in the Gulf of Mexico. [99 Cong. Rec. 2923.]

See also U. S. Br. 51–58 and Appendix E, 389–402; *supra,* pp. 5–15, 20–21, 23–24. The question, then, of whether the Act of June 25, 1868, did approve the Florida claim of a boundary three leagues in the Gulf of Mexico remains to be decided on its merits here.

Florida cites many examples of references, both contemporary and subsequent, to the Act of June 25, 1868, as "approving" the constitutions of Florida and other States (Fla. Br. 43–64). However, it does nothing to overcome our showing that Congress examined only the "reconstruction" aspects of the constitutions: whether they had been duly adopted and established

loyal and republican governments (U. S. Br. 270–312 and Appendix H, 409–425). All discussion of "approval" was with reference to such subjects,[47] and should not be understood more broadly as implying affirmative approval of everything contained in all the constitutions. Indeed, Florida's own quotations show the limited character of the Congressional consideration. See, for example, the statement of Representative Stevens of Pennsylvania:[48]

> Those constitutions have been printed and laid before us. We have looked at them; we have pronounced them *republican in form; and all we propose to require* is that they remain so forever. [Cong. Globe, 40th Cong., 2d Sess., 2465; emphasis added.]

There is no merit in Florida's assertion (Fla. Br. 49) that the State's boundary claim must have been considered and approved because a boundary description is essential to the sufficiency of a constitution as a frame of State government. We find no boundary descriptions in the constitutions of Connecticut, Delaware, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont or Virginia, or, for that matter, in the Constitution of the United States, yet we suppose that the

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[47] Two exceptions to this generalization were discussions of provisions believed to violate the Federal Constitution. See U. S. Br. 271–279.

[48] Mistakenly attributed by Florida to Representative Woodbridge of Vermont. Fla. Br. 47.

adequacy of those documents as frames of government is beyond question. Indeed, three of those States (South Carolina, Louisiana and Georgia) were among those readmitted to representation in Congress by the Act of June 25, 1868, although then, as now, their constitutions contained no boundary descriptions. South Carolina Constitution of 1868, H. Exec. Doc. No. 274, 40th Cong., 2d Sess., 1; Louisiana Constitution of 1868, H. Exec. Doc. No. 281, 40th Cong., 2d Sess., 23; Georgia Constitution of 1868, S. Exec. Doc. No. 57, 40th Cong., 2d Sess., 1.

Florida emphasizes (Fla. Br. 78) that there is no present argument between the United States and any foreign power as to the location of the national or State boundary in the Gulf of Mexico. However, that may be attributed to the fact that the Government has consistently asserted that our boundaries extend no more than three miles from the coast. The promptness with which Great Britain protested when she feared the Treaty of Guadalupe Hidalgo might be intended as an assertion of a broader claim (U. S. Br. 65–66; *supra*, pp. 39–40) and the vigor with which she is now contesting Iceland's attempts to extend exclusive fishing rights beyond three miles[49] indicate the sort of difficulties that might be anticipated if our boundary were held to be beyond the three-mile limit—as we believe it would have to be before the defendants could receive more under the Submerged Lands Act. The importance which this

[49] See *New York Times*, September 2, 1958, p. 1, and September 3, 1958, p. 1.

nation attaches to its adherence to the three-mile limit is well illustrated also by its prompt and vigorous rejection of the claim of Communist China to a 12-mile limit.[50]

C. THE SUBMERGED LANDS ACT GRANTS FLORIDA NOTHING BEYOND ITS BOUNDARIES

Florida argues (Fla. Br. 10, 36–38) that the States have power to own, and Congress had power to grant to them, submerged lands beyond their boundaries, and attributes to the Government a contrary view. Actually, we pointed out specifically in our opening brief (U. S. Br. 148) that Congress, if it had chosen to do so, could have given the States rights in the submerged lands beyond their boundaries, but that, since Congress chose to define the grant in terms of boundaries, we are now confronted with the necessity of determining the location of those boundaries. As we have already shown (*supra,* pp. 19–25; U. S. Br. 31–58), Congress referred to existing legal boundaries marking the limits of general territorial jurisdiction; it did not refer to a special "mineral resources" boundary of greater extent (Fla. Br. 79–81). Even if it had done so, that would be of no benefit to Florida, for, under the decisions of this Court, the State of Florida never had a right of mineral exploitation in the offshore submerged lands. *United States* v. *California,* 332 U. S. 19; *United States* v. *Louisiana,* 339 U. S. 699; *United States* v. *Texas,* 339 U. S. 707. "Prior to" the time when it became a member

[50] See *Washington Post and Times Herald,* September 5, 1958, p. 1.

of the Union (if its status then be material under the Act, which we deny)[51] it was a federal territory; in that status it certainly had no greater rights as against the United States. Even if the limit of permissible mineral exploitation is to be considered a "boundary" in any sense, such a "boundary" could not be possessed by a State which had no rights of mineral exploitation below low water mark.

CONCLUSION

For the foregoing reasons, and those contained in our main brief, we submit that this Court should enter judgment for the United States.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
OSCAR H. DAVIS,
JOHN F. DAVIS,
Assistants to the Solicitor General.
GEORGE S. SWARTH,
Attorney.

SEPTEMBER 1958.

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[51] *Supra*, pp. 16–19; U. S. Br. 47–51.

APPENDIX

SEPTEMBER 5, 1958.

The Honorable J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

DEAR MR. RANKIN: It has come to my attention that certain references made in Comment d to Section 6 of Tentative Draft No. 2 of the Foreign Relations Law of the United States have been interpreted as expressing an opinion on the litigation now in progress between the United States and certain Gulf States.

This Comment was designed solely to make the point that the United States could assert jurisdiction and control over the resources of the Continental Shelf more than three miles from the coast, if it did so on a proper basis, without violating its traditional position that the territorial sea of a State may not extend outward more than three nautical miles from the base line. It also was intended to make the point that whether the U. S. developed those resources itself or permitted the Gulf States to do so was primarily a domestic matter so long as the basis on which the decision was made was not inconsistent with our position on the width of the territorial sea. It was not intended to express an opinion as to what Congress had done with respect to any particular Gulf State in passing the Submerged Lands Act of 1953. If the comment gives any different impression it is the result of an inadvertence, which will be corrected in the next draft.

For your information, this draft was submitted to the American Law Institute only for purposes of discussion, and not for approval. This particular point was not discussed because I, as Reporter, wished to use the time available to me to obtain the views of the American Law Institute on certain other sections.

Sincerely yours,

ADRIAN S. FISHER.

SEPTEMBER 8, 1958.

The Honorable WILLIAM P. ROGERS,
Attorney General.

DEAR MR. ATTORNEY GENERAL: The Acting Attorney General's letter of August 26, 1958, referred to my letter of June 15, 1956, to the Attorney General, in reply to his letter of April 26, 1956, requesting certain information concerning the breadth of the territorial sea for use in the case of *United States* v. *Louisiana,* No. 15, Original, October Term, 1955. The Acting Attorney General's letter states that in its reply brief the State of Texas asserts that my letter was intentionally phrased in terms of "territorial waters" and "marginal seas" to leave open the possibility that the national boundary of the United States was farther seaward than the outer limit of its marginal sea. He asks for a statement as to whether my letter was intended to draw such a distinction or to leave the way open to such a possibility.

My letter of June 15, 1956, can best be understood by a reference to the letter to which it was a reply. The Attorney General's letter of April 26, 1956, stated:

> At a later stage of our suit we may have to deal with the question of how to locate the ordinary

low-water mark and outer limit of inland waters, the base line from which the width of the marginal sea is understood to be measured; *but our immediate concern is only with the width of the marginal sea, and the statement which I now seek need not go beyond that question.* [Emphasis supplied.]

Since I was asked only about the width of the marginal sea, my reply was confined to that question and it pointed out that from the earliest days of the Republic, the position of the United States has been that the width of its territorial sea is three nautical miles measured from the low-water mark on the coast. My letter was not intended to indicate any distinction between the national boundary of the United States and the outer limit of its territorial sea, nor was it intended to leave open the possibility that the national boundary might be farther seaward than the outer limit of its territorial sea. As indicated, it was intended to be a reply to the question asked. I might add that in my letters the terms "territorial waters", "marginal sea" and "territorial sea" are used in the sense understood in international law, i. e. the belt of sea adjacent to its coast over which the sovereignty of a State extends. (See Article 1 of the Convention on the Territorial Sea and the Contiguous Zone adopted at the U. N. Conference on the Law of the Sea at Geneva on April 28, 1958.)

Sincerely yours,

JOHN FOSTER DULLES.

U. S. GOVERNMENT PRINTING OFFICE: 1958